

Concise Explanatory Statement

Dive Fishery Rule Changes

The following rules are amended as part of this rulemaking:

WAC 220-52-069	Scallop fishery
WAC 220-52-071	Sea cucumbers
WAC 220-52-073	Sea urchins

The following are new rules adopted as part of this rulemaking:

WAC 220-16-101	Definitions – Shellfish dive gear
WAC 220-16-102	Definitions – Hand held tool

Reasons for rulemaking:

The Washington Department of Fish and Wildlife’s (WDFW’s) administrative code needs updating, and individual rules require clarification and streamlining. A project to streamline, update, and reorganize WDFW’s administrative code is currently underway. The main objectives of this project are to: (1) reorganize WDFW’s administrative code to maximize its efficiency by ensuring that the code is more logically organized and rules are easier to locate; and (2) update WAC sections to increase legal adequacy, clarity and, where applicable, enforceability. The changes included in the rules listed above are part of this ongoing project and are needed to update, reorganize, clarify, and streamline multiple rules dealing with oyster reserve sales and fish receiving tickets.

Explanation of rule changes:

1. Reducing illegal geoduck harvest in commercial shellfish dive fisheries:

The department amended rules related to the commercial sea urchin, sea cucumber, and scallop dive fisheries. The amendments prohibit certain geoduck dive fishery gear onboard vessels engaged in commercial sea urchin, sea cucumber, and scallop dive fisheries in efforts to reduce illegal geoduck harvest.

2. Director authority to set sea urchin size limits by emergency rule:

The rule changes allow the Director to set sea urchin size limits by emergency rule. The Director needs the authority to set size limits by emergency rule so that emergency rules can be adopted to react quickly to changes in sea urchin populations.

Urchin size limits are set based on biological observations, such as the distribution or urchin test (shell) diameters within regions, size at first reproduction, eggs-per-female, and gregarious settlement of juveniles. Urchin size limit determinations are not policy decisions.

Allowing the Director the authority to adopt emergency rules for sea urchin size limits enables fishery managers to incorporate the most recent data into management decisions and promote resource conservation while maintaining harvest opportunities. This authority will also facilitate timely co-management agreement processes.

3. Definitions to further clarify commercial dive fishery gear:

The rule changes include two new sections in chapter 220-16 WAC to define “shellfish dive gear” and “hand held tool” to further clarify commercial dive fishery gear rules.

4. Organizational improvements and changes to ensure uniformity:

Organizational changes are made to the rules to make them more uniform and to ensure clarity, consistency, and readability. The subsections within the rules are rearranged in a more logical order. Further description is added to rule titles to better communicate the rule’s contents to the reader and to prepare for the upcoming reorganization and renumbering of the department’s WACs. Additionally, language is streamlined and updated.

Differences between the text of the proposed rule and the text of the rule as adopted:

After the CR-102 filing with the proposed language amendments, the department received feedback from stakeholders with suggestions on narrowing the definition of what constitutes geoduck dive gear. With this feedback in mind, the department made some adjustments to rule language to clarify what geoduck dive gear is prohibited on vessels engaged in commercial sea urchin, sea cucumber, and scallop dive fisheries.

The language change is identical in each rule and prohibits a hose or combination of hoses capable of measuring longer than 30 feet or water jet nozzles on vessels engaged in sea urchin, sea cucumber, or scallop dive fisheries. This restriction will prevent geoduck harvest during these fisheries as it is necessary gear for harvesting geoducks in a dive fishery. The language was shared with stakeholders, and the department received only supportive feedback for the language change.

Summary of comments and WDFW’s response to and consideration of the comments:

WDFW posted the changes to the Department website, and shared the rule change language with stakeholders (persons holding commercial sea urchin, sea cucumber, and scallop dive fishery licenses) both before and after filing the CR-102. The department received the following comments from stakeholders:

Comments received after filing the CR-102 and prior to changes:

Comment 1: “It is my opinion if it is a regulation that will eventually be enforced for nonnative and native boats from harvesting geoduck illegally it is a move in the right direction.”

Comment 2: “My concern is primarily about the change of geoduck harvest gear onboard the harvest vessel. My primary business is harvesting geoducks here in Washington, it is not always steady and sometimes I need to be able to switch between fisheries quickly. The only gear that is removable on my boat would be the water hose that we use to harvest the geoducks. Every other

gear is primarily bolted down and integral part of my dive system. From a visual point of determination between dive boats, the water hose is once again the only difference between geoduck dive boats and other dive boats. Much of the dive gear is quite similar in the rest of the dive fisheries.”

Comment 3: “So we can't have ‘geoduck harvest gear’ on board while diving for cucumbers. Does this mean that we can't have dry suits, wet suits, dive computers, dive compressors and other such things? These are parts of any geoduckers dive gear. Maybe this should be clarified a bit. I realize that the intent is to prevent divers from having duck hoses, water pumps, etc. on board but geoduck harvest gear includes a lot of the same gear that is included in shellfish dive gear as geoducks are a shellfish. Maybe just preventing a boat from having duck hoses and nozzles would be enough. Many cuke dive boats that dive for ducks in Alaska have a permanently affixed water pump used for harvesting ducks and to have it removed just for the WA cuke season would not only be a major pain but possibly costly.”

Comment 4 (Paraphrased from phone conversation): “Geoduck harvest gear” should be defined so that harvesters know for what specific equipment they may be cited.

WDFW Response: WDFW thanked commenters for their input and, because commenters expressed that a more refined description of the geoduck gear prohibited on vessels was needed, WDFW adjusted rule language to further refine the specific gear prohibited on vessels engaged in commercial sea urchin, sea cucumber, and scallop dive fisheries.

Comments regarding the language changes after the CR-102 (due to stakeholder feedback):

Comment 1: “This wording seems to be much better. As we all know that geoducks are taken using a high pressure water hose I feel that by restricting the ability to have a water hose on board will remove any ability to harvest ducks. Seems like a reasonable wording of the law to me.”

Comment 2: “That clarification on the rule change would be acceptable with me.”

WDFW Response: WDFW expressed thanks for stakeholder input and the changes the comments addressed were adopted.