

18. Commercial Size Limits for Sea Urchins – (rule briefing and public hearing)

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“GREEN SHEET”

Meeting dates: June 6-7, 2008 Meeting (Rule Briefing and Public Hearing) **#18**

Agenda item #: Commercial Size Limits for Sea Urchins - Rule Briefing and Public Hearing

Staff Contact: Morris Barker, Ph.D., State Marine Resource Manager (Fish Program)

Presenter(s): Morris Barker, Ph.D., State Marine Resource Manager (Fish Program)

Background:

We have been operating the commercial sea urchin fishery by emergency rule for many seasons due to the year-to-year variation in the market place which influences start dates and days per week of operation within the given area quotas. Within that context we also included the maximum and minimum size limits of the sea urchin tests (shell diameter without the spines). We received questions from the AG's office in relation to a size limit violation prosecution where the issue of setting the size by emergency became an argument for the defense on a procedural basis, i.e. what was the emergency. In order to avoid further challenges using this argument as a defense, we are proposing to bring that portion of the rules into permanent status.

Examination of the history of the fishery in recent years found no instance where we have evidence that the minimum or maximum size of the sea urchins needed to be changed. Stability of the size issue makes it appropriate for a permanent rule.

Policy issue(s) you are bringing to the Commission for consideration:

Does the Fish and Wildlife Commission wish to adopt sea urchin size limits by permanent rule and avoid future procedural challenges?

Public involvement process used and what you learned:

This issue has been shared amongst the commercial sea urchin advisory group and no concerns were raised.

Action requested:

Briefing and public hearing only at this time. Adoption consideration will be requested at the June 20, 2008 conference call.

Draft motion language:

N/A

Justification for Commission action:

N/A

Form revised 10/25/07



PROPOSED RULE MAKING

CR-102 (June 2004)
(Implements RCW 34.05.320)
Do NOT use for expedited rule making

Agency: Department of Fish and Wildlife

Preproposal Statement of Inquiry was filed as WSR 08-02-070 _____ ;
or
 Expedited Rule Making--Proposed notice was filed as WSR _____ ; or
 Proposal is exempt under RCW 34.05.310(4).

Original Notice
 Supplemental Notice to WSR _____
 Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject) WAC 220-52-073 Sea urchins.

Hearing location(s):
Shilo Inn
707 Ocean Shores Blvd NW
Ocean Shores, WA 98569

Submit written comments to:
Name: Rules Coordinator
Address: 600 Capitol way No., Olympia, WA 98501-1091
e-mail preuslmp@dfw.wa.gov _____
fax (360)902-2155 _____ by (date) June 5, 2008

Date: June 6-7, 2008 Time: 8:00 AM

Assistance for persons with disabilities: Contact

Date of intended adoption: July 20, 2008 via Conference Call
(Note: This is NOT the effective date)

Susan Yeager _____ by May 23, 2008 _____
TTY (360) 902-2207 _____ or (360) 902-2267 _____

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Purpose of proposal is to put into permanent rule what has been required by emergency rule for a number of years. This will defuse an issue raised by a plaintiff's attorney and will result in no substantive change to the rule intent or to the resource.

Reasons supporting proposal: Removes a potential defense to those who violate the size limit rules on sea urchins.

Statutory authority for adoption: RCW 77.12.047

Statute being implemented: RCW 77.12.047

Is rule necessary because of a:
Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No
If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE
March 27, 2008

DATE: March 27, 2008

TIME: 2:23 PM

NAME (type or print)
Lori Preuss

WSR 08-08-054

SIGNATURE

TITLE
Rules Coordinator

(COMPLETE REVERSE SIDE)

Small Business Economic Impact Statement

1. Description of the reporting, record keeping, and other compliance requirements of the proposed rule.

No record keeping or reporting required. Compliance requires landing only sea urchins that meet the size requirements:

2. Kinds of professional services that a small business is likely to need in order to comply with such requirements.

None required.

3. Costs of compliance for businesses, including costs of equipment, supplies, labor, and increased administrative costs.

No cost of compliance - rules are the same as have been enacted by emergency rule.

4. Will compliance with the rule cause businesses to lose sales or revenue?

No.

5. Cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

There is no cost of compliance.

6. Steps taken by the agency to reduce the costs of the rule on small businesses or reasonable justification for not doing so.

There is no cost so no steps are taken to reduce costs.

7. A description of how the agency will involve small businesses in the development of the rule.

Agency will involve effected fishers through the public rule making process of the Fish and wildlife Commission.

8. A list of industries that will be required to comply with the rule.

Sea urchin fishers.

AMENDATORY SECTION (Amending Order 04-210, filed 8/17/04, effective 9/17/04)

WAC 220-52-073 Sea urchins. It is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section.

(1) **Sea urchin districts:**

(a) Sea Urchin District 1 (Northern San Juan Islands) is defined as Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, and those waters of Area 22A north of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island and west of a line projected true north from Limestone Point on San Juan Island.

(b) Sea Urchin District 2 (Southern San Juan Islands and Port Townsend) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A south of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island and east of a line projected true north from Limestone Point on San Juan Island and Areas 21A, 21B, 22B, 23A, 23B, 25A and 25B. The following areas within Sea Urchin District 2 are closed to the harvest of sea urchins at all times:

(i) Those waters of Haro Strait north of a line projected due west from the southernmost point of Cattle Point on San Juan Island to the international border and south of a line projected due west from a point one-quarter mile north of Lime Kiln Light on San Juan Island to the international border.

(ii) Those waters of San Juan Channel and Upright Channel within the following lines: South of a line projected from Flat Point on Lopez Island true west to Shaw Island; west of a line from Neck Point on Shaw Island to Steep Point on Orcas Island; south of a line from Steep Point on Orcas Island to Limestone Point on San Juan Island north of a line from Flat Point on Lopez Island to the northernmost point of Turn Island and thence projected true west to San Juan Island.

(c) Sea Urchin District 3 (Port Angeles) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 23C east of a line projected true north from Low Point, along 123°49'30" W. longitude, and Area 23D.

(d) Sea Urchin District 4 (Sekiu) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 23C west of a line projected true north from Low Point, along 123°49'30" W. longitude, and those waters of Area 29 east of a line projected true north from the mouth of Rasmussen Creek (3.1 miles southeast of Sail Rock).

(e) Sea Urchin District 5 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 29 west of a line projected true north from the mouth of Rasmussen Creek (3.1

miles southeast of Sail Rock) and Areas 59A and 59B. Within Sea Urchin District 5, waters within one-quarter mile of Tatoosh Island are closed to the harvest of sea urchins at all times.

(f) Sea Urchin District 6 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D and 26A.

(g) Sea Urchin District 7 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 26B, 26C, 26D and 28A. The following areas within Sea Urchin District 7 are closed to the harvest of sea urchins at all times.

(i) Those waters of Eagle Harbor west of a line projected from Wing Point to Eagle Harbor Creosote Light Number 1, then projected due west to the shore on Bainbridge Island.

(ii) The waters of Sinclair Inlet west of a line projected southerly from the easternmost point of Point Turner to landfall directly below the Veteran's Home in Annapolis.

(2) Sea urchin seasons and sizes:

(a) Sea urchin seasons ((and sizes)) will be set by emergency rule.

(b) Green sea urchins in all sea urchin districts - unlawful to harvest urchins smaller than 2.25 inches (size in largest test diameter exclusive of spines).

(c) Red sea urchins in Sea Urchin Districts 1 and 2: Unlawful to harvest urchins smaller than 4.0 inches or larger than 5.5 inches (size in largest test diameter exclusive of the spines).

(d) Red sea urchins in Sea Urchin Districts 3 and 4: Unlawful to harvest urchins smaller than 3.25 inches or larger than 5.0 inches (size in largest test diameter exclusive of spines).

(3) Shellfish diver gear:

(a) It is unlawful to take sea urchins by any means other than shellfish diver gear.

(b) Divers may only use hand-operated equipment that does not penetrate the shell.

(c) Sea urchins may not be taken from water shallower than 10 feet below mean lower low water.

(d) Purple sea urchins may not be taken.

(e) Divers operating from a vessel must have a number assigned by the department, placed on both sides and the top of the vessel in such a manner that the number is clearly visible when the vessel is viewed from either side or from the air and the number must be black on white no less than 18 inches high and of proportionate width.

(f) Divers may not take sea urchins from one-half hour after sunset to one-half hour before sunrise.

(g) No processing of sea urchins is permitted aboard the harvest vessel.

(h) Divers may not take sea urchins for use other than as human food.

(i) Only one diver from each harvesting vessel is allowed in the water at any one time during the sea urchin harvesting operation or when commercial quantities of sea urchins are aboard except that two divers may be in the water if the vessel has been

designated on two sea urchin dive fishery licenses.

(j) Variance from any of the provisions of this subsection is only allowed if authorized by a permit issued by the director.

(k) Licensing: A sea urchin dive fishery license is the license required to operate the gear provided for in this section.