

Concise Explanatory Statement (CES)
WAC Overhaul Technical Rule Changes – Round 6
Various Technical Changes and Repeals

The following rules are amended:

WAC 220-56-315, Personal use crab, shrimp, crawfish—Unlawful acts
WAC 220-47-001, Puget Sound salmon—Quick reporting
WAC 220-47-121, Treaty Indian gear identification

The following rules are repealed:

Chapter 220-85 WAC, Commercial license moratorium advisory review board regulations
WAC 220-28-010, Emergency regulations
WAC 232-12-099, Treaty Indian fishing gear identification

A. Reasons for adopting and repealing rules:

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 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. Repealing unnecessary and outdated rules advances the goals of clarity and confusion-reduction in WDFW's administrative code. This rule making involves repealing outdated rules as well. Amendments and repealed rules, in the order of the CR-102 filing, are as follows:

1. WAC 220-28-010, Emergency regulations, Repealer: This is an outdated and unnecessary chapter that appears was intended to operate as a sort of placeholder. The Rule Coordinator for the Department and primary emergency rule preparer confirmed that the rule is outdated and unnecessary. Emergency rules are handled in a separate process and are based on the WAC section numbers that they modify. The rule has been on the books since 1960, and has not been modified since 1969. Since the rule is not used, the Department chooses to simply repeal it.
2. Chapter 220-85 Repealer – Commercial license moratorium review boards: The rules in this chapter outline a process a person may use to request an appeal relating to the commercial salmon license, the salmon charter boat license, commercial herring license, and the Puget Sound commercial crab license moratoriums. The chapter also notes that a person may request a hearing under the Administrative Procedure Act (APA), instead of a hearing as provided under chapter 220-85 WAC. The process outlined in the rules is outdated, clunky, and unnecessary. Additionally, any determinations by the review boards are not final decisions and the director could choose not to follow those recommendations from the boards. After consulting with the Director, stakeholders, and Assistant Attorneys General, the Department determined that these rules and hearings outlined in them are unnecessary as the rules have not been used for quite some time, and the APA hearing process is a better process to use as it is more standardized and codified in statute. Any person aggrieved by any agency action may request a hearing under the

APA. Appeals of agency actions under the more standard APA are more appropriate than keeping the regulations for the commercial license moratorium advisory review boards.

3. WAC 220-56-315 Personal use crab, shrimp, crawfish—Unlawful acts: Technical changes are made to the rule and penalty provisions referencing the enabling RCW are included. Corrections are also made to penalty provisions and RCW references (see added infractions references for violations that do not involve the taking of fish or shellfish) and an internal WAC subsection reference.
4. WAC 220-47-001 Puget Sound salmon—Quick reporting: This WAC is amended to correct a subsection number reference to WAC 220-69-240.
5. WAC 220-47-121 Treaty Indian gear identification: Amendments to update language and incorporate provisions of a mirror WAC in title 232 WAC, WAC 232-12-099 Treaty Indian fishing gear identification, to eliminate redundancy in the code. There are two rules on the same topic, one in Title 220 WAC and another in Title 232 WAC, because the department never consolidated rules after the department of fisheries and the department of wildlife combined into one agency. The amendments to this rule and repeal of WAC 232-12-099 eliminate this redundancy in preparation for the reorganization and renumbering of the Department's WACs under one title.
6. WAC 232-12-099 Treaty Indian fishing gear identification: This rule is repealed as its provisions are incorporated into WAC 220-47-121 as part of this rulemaking.

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

The Department withdrew WAC 220-56-112 and the repealer for WAC 232-12-082 from WSR 13-14-118. The Department chose not to adopt any changes in WAC 220-56-112 or repeal WAC 232-12-082 at this time to allow for a more comprehensive rewrite of these rules in the future.

The Department also made some small edits to WAC 220-56-315 to add subsections and to ensure clarity of the rule and true expression of intent. Since a permit is required to salvage shellfish pot gear regardless of location, the Department removed “from Hood Canal” from rule language surrounding this topic.

The Department also made some small technical changes to WAC 220-47-121 to ensure the rule applies to the appropriate areas and to update rule language.

C. Summary of comments and WDFW's response to and consideration of the comments:

The Department received no public comments regarding this rulemaking.