



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Washington Department of Fish and Wildlife

Permanent Rule Only

Effective date of rule:

Permanent Rules 13-305

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: Changes to commercial shellfish dive fishery rules to prohibit certain gear types on commercial shellfish harvest vessels will make it more difficult for people to illegally harvest geoducks under the guise of participating in lawful shellfish dive fisheries. The department amends commercial scallop, sea cucumber, and sea urchin fishery rules and adds two new sections containing definitions for dive fishery gear. Improved definitions for gear types and uniform season-opening and closing dates will increase rule clarity and promote resource conservation. Allowing the director to set sea-urchin size limits by emergency rule will also facilitate resource management. Technical changes to rule titles, language, and structure increases the rules' intelligibility, functionality, and efficiency.

Reasons supporting proposal: This rule change proposal was discussed during the Fish and Wildlife Commission meeting and public hearing held on November 8, 2013. The proposed changes were adopted by the Commission at the December 6, 2013, Commission meeting. WDFW needs these changes to increase efficiency, functionality, and clarity of the rules within WDFW's administrative code. The changes promote increased conservation and availability of resources, clarity for stakeholders and the department, and enforceability of the rules.

Citation of existing rules affected by this order:

Repealed:
Amended: WAC 220-52-069, 220-52-071, and 220-52-073
Suspended:

Statutory authority for adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 13-20-147 on October 2, 2013.
Describe any changes other than editing from proposed to adopted version:
The department further refined what type of geoduck dive gear is prohibited on vessels engaged in the commercial sea urchin, sea cucumber, and scallop dive fisheries in WAC 220-52-069, 220-52-071, and 220-52-073, instead of a general reference to "geoduck dive gear." The department refined prohibited gear on vessels engaged in these fisheries to "a hose or combination of hoses measuring 30 feet or more or water jet nozzles." Hoses 30 feet in length and water jet nozzles are necessary geoduck dive gear and prohibiting possession of them on vessels engaged in other dive fisheries accomplishes the goal of reducing potential illegal harvest of geoducks and clarifies requirements for users.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

Date adopted: December 6, 2013

NAME (TYPE OR PRINT)
Miranda Wecker

SIGNATURE
Miranda Wecker

TITLE
Chair, Washington Fish and Wildlife Commission

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED
DATE: December 19, 2013
TIME: 4:20 PM
WSR 14-02-016

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	<u>2</u>	Amended	<u>3</u>	Repealed	__
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

NEW SECTION

WAC 220-16-101 Definitions—Shellfish dive gear. "Shellfish dive gear" is defined as compressed gas delivery equipment required for breathing underwater and attire required to provide thermal protection during underwater shellfish dive harvest operations.

NEW SECTION

WAC 220-16-102 Definitions—Hand held tool. "Hand held tool" is defined as tools that are held by hand and are not powered by internal combustion, hydraulics, pneumatics, or electricity.

WAC 220-52-069 Commercial scallop fishery—Puget Sound. ((It is unlawful to fish for or possess scallops taken for commercial purposes from Puget Sound except as provided for in this section:))

(1) **Licensing and permits:**

(a) ((Rock scallops and weathervane scallops.)) It is unlawful to fish for, take, or possess scallops with shellfish dive gear without a valid shellfish dive fishery license. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.500, Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

(b) It is unlawful ((at any time)) to fish for, take, or possess rock or weathervane scallops ((taken)) for commercial purposes from Puget Sound unless a person ((has)) first ((obtained)) obtains a valid scallop brood stock collection permit issued by the department. ((The permit will specify)) A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.500, violation of commercial fishing without a license—Penalty, depending on the circumstances of the violation.

(c) It is unlawful to harvest scallops for brood stock or culture purposes in a manner that violates scallop brood stock collection permit provisions. Scallop brood stock collection permit provisions include, but are not limited to, the location, date and time restrictions on harvest, and the species((, location, time,)) and quantity of scallops ((that can be taken)) the permit holder may take for brood stock or culture purposes. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.750, Unlawful use of a department permit—Penalty.

((b) Licensing: A shellfish dive fishery license is a license that allows a permittee to retain rock and weathervane scallops for brood stock purposes.))

(2) ((Pink scallops and spiny scallops.)) **Harvest areas and seasons.**

(a) ((General provisions:

(i)) It is unlawful to take or possess pink ((and)) or spiny scallops ((may be harvested from Puget Sound at any time.

(ii) The minimum commercial pink or spiny scallop size is 2 inches in length from the hinge to the outer margin of the shell.

(iii) Persons fishing for pink or spiny scallops must have approval of the Washington state department of health. Scallops may only be taken from areas approved by the department of health and any fisher taking pink or spiny scallops must have on board the harvesting vessel a valid department of health shellfish toxin sampling agreement.

(iv) No other shellfish except octopus and squid may be retained while scallop fishing or while scallop are possessed aboard the scallop fishing vessel.

(b) Trawl gear provisions: Otter trawl gear may not be used to fish for scallops in Puget Sound at any time.

(c) Shellfish diver gear provisions:

(i) Diving for scallops is prohibited in Sea Urchin Districts 1 and 2 closed waters as defined in WAC 220-52-073 (1)(a)(i), (ii), (1)(b)(i), and (ii).

(ii) Licensing: A shellfish dive fishery license is the license required to take scallops with shellfish diver gear.)) for commercial

purposes, except during open scallop harvest seasons from open shellfish management areas as provided by emergency rule.

(b) It is unlawful to fish for, take, or possess scallops from the closed waters in Sea Urchin Districts 1, 2, 5, and 7 as defined in WAC 220-52-073.

(c) It is unlawful to fish for or take pink or spiny scallops from official sunset through 5:59 a.m. the following morning.

(3) A violation of subsection (2) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time-Penalty, depending on the circumstances of the violation.

(4) **Size limits:** It is unlawful to take or possess pink or spiny scallops less than 2 inches in length, measured from the hinge to the outer margin of the shell. A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550, Violation of commercial fishing area or time-Penalty.

(5) **Shellfish dive gear and harvest vessel restrictions:**

(a) It is unlawful to fish for, take, or possess pink or spiny scallops by any means other than by hand with shellfish dive gear. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing-Unlawful gear or methods-Penalty.

(b) It is unlawful to operate a vessel engaged in scallop harvest operations unless the vessel registration number assigned by the department is properly displayed as provided by department rule. A violation of this subsection is a misdemeanor punishable under RCW 77.15.540, Unlawful use of a commercial fishery license-Penalty.

(c) It is unlawful for more than one diver from a harvest vessel to be in the water at any one time during pink or spiny scallop harvest operations or when commercial quantities of pink or spiny scallops are on board the vessel. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing-Unlawful gear or methods-Penalty.

(d) It is unlawful for a vessel engaged in the harvest of pink or spiny scallops to have through-hull fittings for water discharge hoses to be below the surface of the water. Through-hull fittings above the water line must be visible at all times. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing-Unlawful gear or methods-Penalty.

(e) It is unlawful to possess a single hose or combination of hoses capable of measuring longer than thirty feet or water jet nozzles onboard a vessel engaged in the commercial pink or spiny scallop fishery. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing-Unlawful gear or methods-Penalty.

(6) **Possession restrictions:** It is unlawful to possess geoduck clams during pink or spiny scallop harvest operations, or possess geoduck clams on a vessel that has pink or spiny scallops on board. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time-Penalty, depending on the circumstances of the violation.

WAC 220-52-071 Commercial sea cucumber(~~s~~) fishery. (~~It is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section.~~)

(1) **Licensing:** It is unlawful to fish for, take, or possess sea cucumbers with shellfish dive gear without a valid shellfish dive fishery license. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.500, Commercial fishing without a license-Penalty.

(2) **Harvest areas and seasons:**

(a) It is unlawful to fish for, take, or possess sea cucumbers for commercial purposes, except during open sea cucumber harvest seasons and from open sea cucumber districts as provided by emergency rule.

(b) It is unlawful to fish for or take sea cucumbers from official sunset to 5:59 a.m. the following morning.

(c) A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time-Penalty.

(3) **Sea cucumber districts defined:**

(a) Sea Cucumber District 1 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, and 23B outside of the following closed areas:

(i) 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.

(ii) 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.

(b) Sea Cucumber District 2 is defined as the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23C, 23D, 25A, 25B, 25C, 25D, 25E, and 29.

(c) Sea Cucumber District 3 is defined as the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D, 26A, 26B, and 26C. The following areas within Sea Cucumber District 3 are closed to the harvest of sea cucumbers:

(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 shore on Bainbridge Island.

(ii) Those 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.

(d) Sea Cucumber District 4 is defined as the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 27A, 27B, and 27C.

(e) Sea Cucumber District 5 is defined as the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 26D, 28A, 28B, 28C, and 28D.

~~((2) Sea cucumber areas and seasons:~~

Sea cucumber areas and seasons will be set by emergency rule.

On days open to sea cucumber harvest, it is unlawful to take sea cucumbers from one half hour before official sunset to 5:59 a.m. the next morning. Violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time Penalty.

~~(3))~~ **(4) Shellfish ((diver)) dive gear and harvest vessel restrictions:**

(a) ~~((Divers operating from))~~ It is unlawful to fish for, take, or possess sea cucumbers taken for commercial purposes by any means other than by hand with shellfish dive gear. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing-Unlawful gear or methods-Penalty.

(b) It is unlawful to operate a vessel ((must have a)) engaged in commercial sea cucumber harvest operations unless the vessel registration 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 letters must be black on white no less than eighteen inches in height and of proportional width. Failure to display these numbers)) is properly displayed on the vessel as provided by department rule. A violation of this subsection is a misdemeanor punishable under RCW 77.15.540, Unlawful use of a commercial fishery license.

~~((b) Only))~~ (c) It is unlawful for more than one diver from ((each harvesting)) a harvest vessel ((is allowed)) to be in the water at any one time during ((the)) sea cucumber harvest operations or when commercial quantities of sea cucumbers are aboard, except that two divers from a harvest vessel may be in the water at one time if the vessel ((has been)) is designated on two sea cucumber dive fishery licenses. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing-Unlawful gear or methods-Penalty.

~~((c) Divers may not fish for or))~~ (d) It is unlawful for a vessel engaged in the harvest of sea cucumbers to have through-hull fittings for water discharge hoses below the surface of the water. Through-hull fittings above the water line must be visible at all times. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing-Unlawful gear or methods-Penalty.

(e) It is unlawful to possess a single hose or combination of hoses capable of measuring longer than thirty feet or water jet nozzles onboard a vessel engaged in the commercial sea cucumber fishery. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing-Unlawful gear or methods-Penalty.

(5) Possession restrictions: It is unlawful to possess geoduck clams during commercial sea cucumber ((harvesting)) harvest operations, or possess geoduck clams on a vessel that has sea cucumbers on board. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time-Penalty, depending on the circumstances of the violation.

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

~~(4) Trawl gear:~~

~~It is unlawful to fish for or possess sea cucumbers taken with trawl gear. Violation of this subsection is punishable under RCW 77.15.520, Commercial fishing-Unlawful gear or methods-Penalty.)~~

WAC 220-52-073 Commercial sea urchin((s)) fisheries. ((It is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section.))

(1) **Licensing:** It is unlawful to fish for, take, or possess sea urchins for commercial purposes with shellfish dive gear without a valid shellfish dive fishery license. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.500, Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

(2) **Harvest areas, seasons, and size restrictions:**

(a) It is unlawful to fish for, take, or possess sea urchins for commercial purposes except during open sea urchin harvest seasons, from open sea urchin districts, and within the size restrictions as set by emergency rule.

(b) It is unlawful to fish for or take sea urchins from official sunset through 5:59 a.m. the following morning.

(c) It is unlawful to harvest or possess sea urchins taken from less than ten feet below mean lower low water.

(d) It is unlawful to process sea urchins aboard the harvest vessel.

(e) It is unlawful to take sea urchins for commercial use for purposes other than human consumption.

(3) A violation of subsection (2) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty, depending on the circumstances of the violation.

(4) **Sea urchin districts defined:**

(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 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))~~ **(5) Shellfish ((diver)) dive gear and harvest vessel restrictions:**

(a) It is unlawful to fish for, take, or possess sea urchins by any means other than ~~((shellfish diver gear.~~

~~(b) Divers may only use hand-operated equipment))~~ with hand held tools that ~~((does))~~ do 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))~~ (b) It is unlawful for more than one diver from ((each harvesting)) a harvest vessel ((is allowed)) to be in the water at any one time during ((the)) sea urchin ((harvesting)) harvest operations or when commercial quantities of sea urchins are ((aboard)) onboard, except that two divers may be in the water if the harvest vessel ((has been)) is 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.)~~ (c) It is unlawful for a vessel engaged in the harvest of sea urchins to have through-hull fittings for water discharge hoses below the surface of the water. Through-hull fittings above the water line must be visible at all times. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing-Unlawful gear or methods-Penalty.

(d) It is unlawful to possess a single hose or combination of hoses capable of measuring longer than thirty feet or water jet nozzles onboard a vessel engaged in the commercial sea urchin fishery. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing-Unlawful gear or methods-Penalty.

(e) It is unlawful to operate a vessel engaged in sea urchin harvest operations unless the vessel registration number assigned by the department is properly displayed as provided by department rule. A violation of this subsection is a misdemeanor punishable under RCW 77.15.540, Unlawful use of a commercial fishery license-Penalty.

(6) **Possession restrictions:** It is unlawful to possess geoduck clams during commercial sea urchin harvest operations, or possess geoduck clams on a vessel that has sea urchins onboard. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time-Penalty, depending on the circumstances of the violation.