

Concise Explanatory Statement

Pinto Abalone Listing as an Endangered Species in the State of Washington

The following rules are amended as part of this rulemaking:

WAC 220-320-010 Shellfish - Classification

WAC 220-330-090 Crawfish, abalone, sea urchins, sea cucumbers, goose barnacles – Areas and Seasons

WAC 220-610-010 Wildlife classified as endangered species

Reasons for rulemaking:

The department initiated a review of the status of pinto abalone populations in the state in October 2018, following the procedures in WAC 220-610-110. A preliminary review presented in December 2018 found that populations in the state are in danger of failing due to limited numbers. Numbers were reduced initially by a recreational fishery (initiated 1959, closed 1994) and likely illegal harvest, but continue to decline in the absence of significant harvest. Monitored populations have declined 97% since 1992, and a lack of juvenile abalone sightings paired with increasing average size of the survivors suggests an aging population that is not reproducing in significant numbers. Peer review and public comment of the preliminary status review confirmed the findings, and a final status report recommending the species be listed as endangered was issued in April 2019.

Explanation of rule changes:

1. Remove pinto abalone from the list of classified shellfish in WAC 220-320-010. This is necessary because only wildlife can be listed as endangered species (RCW 77.12.020) and classified shellfish do not fall under the definition of wildlife in RCW 77.08.010.
2. Remove the language defining the areas and seasons which pinto abalone can be fished in WAC 220-330-090. When abalone are no longer classified as a shellfish, rules concerning the areas and seasons which abalone can be legally harvested are no longer needed.
3. Add pinto abalone to the list of endangered species in Washington found in WAC 220-610-010.

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

There are no changes to the adopted rule from the proposed rule.

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

1. Public comment. WDFW conducted extensive outreach to gather comments from the public concerning the potential listing of pinto abalone. The preliminary status report was made available on the department website (<https://wdfw.wa.gov/publications/02031>) and staff reached out via mail, email, and phone to treaty tribes, universities, scuba diving organizations, commercial dive harvesters of other species, nonprofits, aquaria, science centers, marine resource committees, ports, and boating organizations. Staff gave 8 presentations around Puget Sound (Olympia, Tacoma, Port Townsend, Langley, Anacortes, Friday Harbor, Bellingham and remotely to the Northwest Straits Foundation). WDFW received 33 written comments in response to the listing. 31 of the comments supported the listing, 1 did not comment on listing but supported the continued closure of the fishery, and 1 comment suggested the department instead develop hatchery propagation of abalone (which it has). The 33 comments came from 25 individuals and 8 organizations: Friday Harbor Laboratories, San Juan County Commissioners, Island County Commissioners, Jefferson County Commissioners, Northwest Straits Commission, Skagit County Marine Resource Committee, SeaDoc Society, and Friends of the San Juans. At

the Fish and Wildlife commission hearing on April 5, 2019, one individual representing the Center for Biological Diversity commented in favor of the listing.

2. Scientific Peer Review. The preliminary status review document was sent to three experts in abalone biology, monitoring, or restoration in Alaska, British Columbia, and California for formal scientific peer review. All reviewer suggestions were incorporated in the final status report. Improvements included greater discussion of the evidence for cryptic populations of pinto abalone on the outer coast of Washington, clarity in the Canadian and U.S. Federal status review processes, additional citations concerning abalone biology, and minor edits. The main themes of the report, and the recommendation to list as endangered, were unchanged by the peer review process.

3. Final Public Comment. The final status report, including suggested changes by peer reviewers, was released for an additional public comment period from April 15 – May 15, 2019. Five new written comments were received during this period, all supportive of listing.