

Item B : Technical WAC Amendments and Repeal, Round 2 – Briefing

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“GREEN SHEET”

Meeting: May 4, 2012, Commission Conference Call

Agenda item B: WAC Overhaul Technical Rule Changes, Round 2

Staff Contact: Mike Cenci, Deputy Chief, Enforcement Program

Presenter(s): Joanna Eide, Administrative Regulations Analyst,
Enforcement Program

Background: A WAC overhaul project is currently underway to update, reorganize, and streamline the department’s administrative code. The WAC overhaul project was presented to the Commission during the February 2012 meeting. Several technical amendments for rule clarity, uniformity, and accuracy, as well as the repeal of outdated and unnecessary rules will be done as part of this project. This agenda item will brief the Commission on an expedited rule-making proposal that was filed on February 21, 2012, as part of the WAC overhaul. The purpose of the proposal is to amend some WAC sections to make small technical changes to the titles and language of rules for accuracy and clarity. It makes one change to a WAC section in order to align it with another rule. The proposal also repeals several outdated and unnecessary WAC sections.

Policy issues: The proposal includes technical amendments to clarify words and correct outdated statutory references. The only policy issue to consider relates to a one-line amendment to align WAC 220-56-129 with WAC 220-12-090.

Public involvement process and outcome: Because the proposed changes are technical rather than substantive, we are using the expedited rule-making process. This process allows people to object to its use, but it does not provide for public input on the underlying rules. The public may object by April 23, 2012; however, no contact from the public has been received and none is anticipated due to the technical nature of these changes.

Action requested: None.

Draft motion language: None.

Justification for Commission Action: Rule language is supposed to be efficient, clear, legally adequate, and accurate. The proposed amendments are in accordance with these goals and will promote them while avoiding changes to the underlying meaning of the rules. The repeal of outdated rules in this proposal will promote the clarity and efficiency of WDFW’s administrative code.

Communications Plan: This expedited proposal is listed on the agency's website, on the Current Rule Making Activities page. No formal communication plan was needed.



EXPEDITED RULE MAKING

CR-105 (June 2004)
(Implements RCW 34.05.353)
EXPEDITED RULE MAKING ONLY

Agency: Washington Department of Fish and Wildlife

Title of rule and other identifying information:
WAC 220-16-230 Geographical definitions – Outside Initiative 77 line;
WAC 220-16-235 Geographical definitions – Inside Initiative 77 line;
WAC 220-16-275 Geographical definitions – Village Point;
WAC 220-16-280 Geographical definitions – Clam and oyster districts;
WAC 220-56-129 Unclassified freshwater invertebrates and fish;
WAC 220-76-130 Marine finfish aquaculture – Aquaculture facility inspection authority;
WAC 220-77-081 Aquaculture facility inspection authority;
WAC 220-130-010 Purpose;
WAC 232-13-010 Introduction; and
WAC 232-13-020 Purpose.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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AND RECEIVED BY (Date) April 23, 2012.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this proposal is to repeal several WAC sections that are outdated, redundant, and/or no longer necessary; to make small technical changes to WAC titles to ensure clarity and uniformity; and to align a WAC with another rule.

Reasons supporting proposal: These changes will eliminate unneeded rules and contribute to efforts to streamline and clarify the department's administrative code. Keeping incorrect, outdated, or unnecessary rules in the code will only lend to confusion. The proposed technical changes to existing WACs will ensure the clarity of the rules.

Statutory authority for adoption: RCW 34.05.353(1)(c) and (e), 34.05.353(2)(c) and (d), and 77.12.047(1)(o).

Statute being implemented: RCW 34.05.353(1)(c) and (e), 34.05.353(2)(c) and (d), and 77.12.047(1)(o).

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

DATE
February 21, 2012

NAME (TYPE OR PRINT)
Joanna Eide

SIGNATURE

TITLE
Administrative Regulations Analyst

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 21, 2012
TIME: 11:25 AM
WSR 12-05-101

(COMPLETE REVERSE SIDE)

Name of proponent: Washington Department of Fish and Wildlife.

- Private
- Public
- Governmental

Name of agency personnel responsible for:

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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:
None.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-16-230	Geographical definitions--Outside Initiative 77 line.
WAC 220-16-235	Geographical definitions--Inside Initiative 77 line.
WAC 220-16-275	Geographical definitions--Village Point.
WAC 220-16-280	Geographical definitions--Clam and oyster districts.

AMENDATORY SECTION (Amending Order 10-64, filed 3/19/10, effective 5/1/10)

WAC 220-56-129 Unclassified freshwater invertebrates and fish. (1) Definitions. For purposes of this section, "freshwater clams and mussels" means all freshwater bivalves existing in Washington in a wild state, except prohibited aquatic animal species classified under WAC 232-12-090.

(2) It is unlawful for any person to take or possess freshwater clams and mussels taken for personal use. Freshwater clams and mussels include all bodily parts but does not include five pounds or less of relic shells of freshwater clams and mussels. A relic (dead) shell is defined as one which apparently died of natural causes and contains no meat or soft parts: It readily exhibits noticeable sediment, vegetation, algal or mineral stains, discolorations, soiling, weathering or other visual evidence on its interior surface which clearly and unambiguously shows the shell has not been cooked-out or freshly cleaned. No license or permit is required to take or possess up to five pounds of relic shells per day. It is unlawful to take or possess more than five pounds of relic shells without first obtaining a scientific collection permit.

(3) It is unlawful to retain any freshwater fish not classified as a food fish or game fish, with the exception of northern pike when taken in accordance with WAC 220-12-090.

(4) It is unlawful for any person to take, fish for or possess Pacific lamprey, western brook lamprey, or river lamprey taken for personal use.

(5) Violation of this rule is punishable under RCW 77.15.140.

AMENDATORY SECTION (Amending Order 02-309, filed 12/24/02, effective 7/1/03)

WAC 220-76-130 (~~Marine finfish aquaculture~~) Aquaculture facility inspection authority--Marine finfish aquaculture. Authorized department employees shall, at reasonable times and in a reasonable manner, have access to marine aquatic farming locations to conduct inspections to determine conformity with the law and the rules of the department relating to preventing escaped finfish and/or the recapture of escaped finfish. The department shall conduct at least annual inspections of marine finfish aquaculture facilities of the state.

AMENDATORY SECTION (Amending Order 01-281, filed 12/21/01, effective 1/21/02)

WAC 220-77-081 Aquaculture facility inspection authority---
Generally. Authorized department employees shall, at reasonable times and in a reasonable manner, have access to all finfish aquaculture facilities to conduct inspections for the prevention and suppression of aquaculture diseases, including, but not limited to, taking samples for detection of regulated finfish pathogens and other diseases. If the department is denied access, a court of competent jurisdiction may issue a search warrant authorizing access to the facility upon a showing that the facility is engaged in aquaculture production and that access has been denied.

OTS-4632.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-130-010 Purpose.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-13-010

Introduction.

AMENDATORY SECTION (Amending Order 07-293, filed 12/17/07, effective 1/17/08)

WAC 232-13-020 Declaration of purpose--Department lands. The primary purpose of department lands is the preservation, protection, perpetuation and management of fish and wildlife and their habitats. Public use of department lands may include fishing, hunting, fish and wildlife appreciation, and other outdoor recreational opportunities when compatible with healthy and diverse fish and wildlife populations.