

**Item #8 : Commercial Shellfish Dive Fishery Rules–
Rule Briefing and Public Hearing**

TABLE OF CONTENTS

	Page
Summary sheet	i-ii
CR 102	1-2
Small Business Economic Impact Statement	3
WAC 220-52-069, Scallop fishery.....	5
WAC 220-52-071, Sea cucumbers	7
WAC 220-52-073, Sea urchins	9
New section, WAC 220-16-101, Definitions—Shellfish dive gear	12
New section, WAC 220-16-102, Definitions—Hand held tool	12

Summary

Meeting dates:	November 8-9, 2013
Agenda item:	Commercial Shellfish Dive Fishery Proposed Rule Changes Briefing and Public Hearing
Presenter(s):	Mike Cenci, Deputy Chief Joanna Eide, Administrative Regulations Analyst

Background summary:

This rule change proposal amends commercial shellfish dive fishery rules and proposes two new definitions to clarify commercial shellfish dive fishery gear. 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 proposal makes structural and technical changes for uniformity and clarity. The changes also allow the director to set sea urchin size limits by emergency rule.

Recent reductions in geoduck biomass on closed tracts, signs of active digging in closed areas and reports of illegal harvest on closed tracts and aquatic farms indicate that illegal geoduck harvest may be widespread. Harvest occurs by divers from boats equipped with harvest gear. Hydraulic equipment used for geoduck harvest is commonly found on commercial fishing vessels. It is unknown how much illegal geoduck harvest occurs in commercial shellfish dive fisheries, however, there are case investigations that demonstrate that a single individual on a commercial harvest vessel can do extensive damage to the geoduck resource. These proposed rule changes extend preventative measures already in place in the commercial geoduck fishery to other commercial shellfish dive fisheries.

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

The department requests the Commission consider proposed changes to dive fishery rules to reduce illegal geoduck harvest during scallop, sea cucumber, and sea urchin dive fisheries. The department proposes two new commercial dive gear definitions as part of this rulemaking project to clarify the types of gear allowed on a vessel harvesting scallops, sea cucumbers, or sea urchins. Additionally, the department proposes that the Commission grant the director the authority to prescribe sea urchin size limits by emergency rule.

Public involvement process used and what you learned:

A public hearing will be held in conjunction with the Commission briefing during the November Fish and Wildlife Commission Meeting. The department also sent notification of proposed rule changes to members of the public who indicated that they wished to be notified of proposed rule changes. The department contacted industry stakeholders (holders of scallop, sea cucumber, and sea urchin dive fishery licenses) to notify them of the proposed rule changes and request input.

Action requested: N/A

Draft motion language: N/A

Justification for Commission action:

These rule changes will reduce the risk of illegal geoduck harvest from commercial dive harvest vessel, improve management response to sea urchin population changes, and improve regulation of the scallop fishery to better coordinate with the WA Department of Health during paralytic shellfish poisoning closures. The proposed rule changes will improve enforceability of the rules and improved definitions for gear types and uniform season-opening and closing dates will increase rule clarity and promote resource conservation.

Additionally, the director needs the authority to set urchin size limits by emergency rule so that urchin fishery managers can incorporate the most recent data into management decisions, as managers do for similar decisions, such as setting harvest quotas or season openings. Urchin size limits are not policy decisions. Urchin size limits are set based solely on biological observations, such as the distribution of urchin test (shell) diameters within regions, size at first reproduction, eggs-per-female, and gregarious settlement of juveniles. Having these determinations set by the Commission will unnecessarily burden the Commission and delay translation of the best and most current information into responsive management. Allowing the director to set size limits by emergency rule will also facilitate timely co-management agreement processes.

Additionally, rule language is supposed to be efficient, clear, legally adequate and accurate. The proposed amendments are in accordance with and will promote these goals.

Communications Plan: This rule proposal is listed on the department's website on the Current Rule Making Activities page. The department sent notification of the rule change proposal to members of the public who expressed interest in receiving notification of proposed rule changes. The department also shared the proposed rule changes with stakeholders. Some comments have been received from stakeholders thus far. One comment stated that the changes are a step in the right direction if the change will eventually be enforced on non-Indian and Indian fishers alike. Another comment expressed some concern about the practicality of removing gear from the vessel as there is a need to switch between fisheries quickly.

Form revised 12/5/12



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington Department of Fish and Wildlife

- Preproposal Statement of Inquiry was filed as WSR 13-06-066 on 3/6/13; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR _____

Title of rule and other identifying information:

This rule-making involves commercial shellfish dive fishery rules. The existing WAC sections involved in this project are as follows:

- WAC 220-52-069, Scallop fishery—Puget Sound.
- WAC 220-52-071, Sea cucumbers.
- WAC 220-52-073, Sea urchins.

The department also proposes two new WAC sections as part of this project to define terms:

- WAC 220-16-101, Definitions—Shellfish dive gear.
- WAC 220-16-102, Definitions—Hand held tool.

Hearing location(s):

Natural Resources Building,
First Floor, Room 172
1111 Washington St. SE
Olympia, WA 98504

Date: November 8-9, 2013 Time: 8:30 a.m.

Submit written comments to:

Name: Joanna Eide
Address: Enforcement Program
600 Capitol Way N., Olympia, WA 98501
E-mail: Joanna.Eide@dfw.wa.gov
Fax: (360) 902-2155 by (date) October 31, 2013

Assistance for persons with disabilities: Contact:

Tami Lininger by October 31, 2013
TTY (800) 833-6388 or (360) 902-2267

Date of intended adoption: On or after December 6, 2013

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: 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 proposes amending commercial scallop, sea cucumber, and sea urchin fishery rules and proposes two new 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 will increase the rules' intelligibility, functionality, and efficiency.

Reasons supporting proposal: 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.

Statutory authority for adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.15.045, and 77.12.047.

Statute being implemented: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 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: **October 02, 2013**

TIME: **11:16 AM**

WSR **13-20-147**

DATE

October 2, 2013

NAME (type or print)

Joanna Eide

SIGNATURE

TITLE

Administrative Regulations Analyst/Acting Rules Coordinator

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None.

Name of proponent: Washington Department of Fish and Wildlife.

- Private
- Public
- Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting.....	Joanna Eide	1111 Washington St. SE, Olympia, WA 98504	(360) 902-2403
Implementation.....	Captain Mike Cenci	1111 Washington St. SE, Olympia, WA 98504	(360) 902-2938
Enforcement.....	Chief Steve Crown	1111 WASHINGTON St. SE, Olympia, WA 98504	(360) 902-2373

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name: Joanna Eide
 Address:
 WDFW Enforcement
 600 Capitol Way N
 Olympia, WA 98501
 phone (360) 902-2403
 fax (360) 902-2155
 e-mail Joanna.eide@dfw.wa.gov

No. Explain why no statement was prepared.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:

phone () _____
 fax () _____
 e-mail _____

No: Please explain: These proposals do not involve hydraulics.

Small Business Economic Impact Statement Commercial Shellfish Dive Fishery Rule Changes

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

This proposed rule changes involve harvest requirements for small businesses engaged in commercial shellfish dive fisheries, specifically scallop, sea cucumber, and sea urchin dive fisheries. The changes clarify gear requirements and restrictions, create definitions for gear types, correct and provide statute references, improve the structure of the rules, and clarify harvest restrictions and requirements. The rule changes also include provisions that prohibit the possession of geoduck harvest gear aboard vessels engaged in scallop, sea cucumber, and sea urchin dive fisheries to curb illegal geoduck harvest during those fisheries. Small businesses engaged in scallop, sea cucumber, and sea urchin fisheries must comply with the rule requirements when engaging in these fisheries.

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

There are no professional service requirements for a small business to comply with the requirements.

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

The costs of compliance with the provisions within the proposal may be in employee/owner working time, but any costs will be negligible. Costs will be negligible because the underlying requirements remain largely unchanged and are simply restructured and clarified, and it will not be difficult for small businesses to comply with the new and clearer prohibition on geoduck gear on vessels engaging in scallop, sea cucumber, and sea urchin fisheries. Additionally, geoduck gear and dive fishery gear are more clearly defined which will make the requirements easier for small businesses to comply with.

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

No. Compliance with the changes to department requirements in this rule making will not cause businesses to lose sales or revenue. Most of the changes are technical and do not change or increase requirements for small businesses. The changes clarify pre-existing requirements and prohibitions on geoduck gear during these dive fisheries and correct references.

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.**

The costs of complying with the proposed changes to the rules in this project will be negligible as most changes are technical and do not increase any pre-existing requirements, other than clearly prohibiting geoduck gear onboard vessels engaged in scallop, sea cucumber, and sea urchin fisheries.

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

The requirements already apply to small businesses and changes to the rule are mostly technical in nature, meaning that costs associated with the rule are negligible. Other changes are made as clearly as possible to reduce the chance of confusion for small businesses complying with the rules. As such, it was not necessary for the department to take additional steps to reduce the costs on small businesses.

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

The department solicited feedback and suggestions from stakeholders, almost exclusively small businesses, prior to filing the CR-102 for the proposed rule changes. The department welcomes input from stakeholders and will continue to work with them throughout the rule process to achieve the best outcome possible for all parties.

WDFW sends out a notice of proposed rule-making projects after the proposed rule changes are filed to people who notified the department that they are interested in the department's rule-making activities. The department will also send direct notice to those commercial fishers holding dive fishery licenses to notify them of the proposed rule changes. This notice directs the receiver to information on how they can participate in the rule-making process and comment on proposed changes.

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

Commercial fishers will be required to comply with the rules.

AMENDATORY SECTION (Amending WSR 11-07-108, filed 3/23/11, effective 4/23/11)

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 geoduck harvest gear, including 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.~~

~~((e) 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 geoduck harvest gear, including 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.)~~

AMENDATORY SECTION (Amending WSR 08-15-127, filed 7/22/08, effective 8/22/08)

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 geoduck harvest gear, including 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.

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.