



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 14-04-132 on 02/05/14;
 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: (Describe Subject)
 WAC 220-52-01901, Commercial geoduck harvest license.
 New section, WAC 220-52-01904, Commercial geoduck harvest—License application and issuance process for 2015 geoduck diver licenses

Hearing location(s):
 Natural Resources Building, Room 172
 1111 Washington St. SE
 Olympia, WA 98504

Submit written comments to:
 Name: Joanna Eide, WDFW Rules Coordinator
 Address: 600 Capitol Way North
 Olympia, WA 98501-1091
 E-mail: Rules.Coordinator@dfw.wa.gov
 Fax: (360) 902-2155 by (date) August 1, 2014

Date: August 8-9, 2014 Time: 8:30 a.m.

Assistance for persons with disabilities: Contact
 Tami Lininger by August 1, 2014
 (360) 902-2207 or TTY at 1-800-833-6388

Date of intended adoption: On or after August 15, 2014
 (Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
 The purpose of this proposed rule change is to establish an equitable license application and issuance process for geoduck diver licenses to comply with changes to state law to limit geoduck diver licenses to 77 per year beginning January 1, 2015. These proposed rule changes also address additional application eligibility requirements for geoduck diver licenses as required by RCW 77.65.410. New WAC 220-52-01904 will operate on a temporary type basis to allow the department to issue licenses for first right of refusal applicants as established in section 2 of HB 1764. WAC 220-52-01904 will be repealed after January 1, 2015, as it will no longer be needed. A separate rulemaking to establish another more permanent rule for use after January 1, 2015, (New WAC 220-52-01905) is being done in tandem with this rulemaking. The department is also amending WAC 220-52-01901 to add geoduck diver licenses to rule provisions as only geoduck fishery licenses were provided for in that rule and a person may harvest geoduck under both a geoduck fishery license and a geoduck diver license.

Reasons supporting proposal: HB 1764 was passed by the Washington State Legislature in 2013. This bill limited the geoduck diver licenses issued by the department to 77 licenses per calendar year beginning in 2015 and imposed new application eligibility requirements. The department needs these rules to establish an equitable process the department will follow to comply with changes to state law to limit geoduck diver licenses to 77 per year beginning January 1, 2015, and to address new application requirements for geoduck diver licenses. The rule changes promote clarity and establish a clear process for issuing geoduck diver licenses.

Statutory authority for adoption: RCW 77.04.012, 77.04.013, 77.12.047, and 77.65.410.

Statute being implemented: RCW 77.04.012, 77.04.013, 77.12.047, and 77.65.410.

Is rule necessary because of a:

Federal Law? Yes No
 Federal Court Decision? Yes No
 State Court Decision? Yes No
 If yes, CITATION:

DATE
 July 2, 2014

NAME (type or print)
 Joanna Eide

SIGNATURE

TITLE
 Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: **July 02, 2014**
 TIME: **11:19 AM**
 WSR **14-14-135**

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

None.

Name of proponent: (person or organization) Washington Department of Fish and Wildlife

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting.....	Frank Hawley	1111 Washington Street SE, Olympia, WA 98504	(360) 902-2453
Implementation.....	Frank Hawley	1111 Washington Street SE, Olympia, WA 98504	(360) 902-2453
Enforcement.....	Steve Crown	1111 Washington Street 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, WDFW Rules Coordinator
Address: 600 Capitol Way North
Olympia, WA 98501-1091
Phone: (360) 902-2403
Fax: (360) 902-2155
E-mail: Rules.Coordinator.@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: This rule change does not affect hydraulics.

Small Business Economic Impact Statement

Commercial Geoduck Diver Licenses Rule Changes

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

These proposed rule changes will allow the equitable issuance of 77 geoduck diver licenses and will allow the Department of Fish and Wildlife (WDFW) to address the limitation of 77 geoduck diver licenses issued per calendar year by the Washington State Legislature in HB 1764.

The right of first refusal applicants that meet the stated qualifications received by WDFW by January 28, 2014, will be given the first right of refusal for up to 77 licenses. The applicants must provide proof that they were included on a Department of Natural Resources (DNR) harvest agreement plan of operation in 2011, 2012, 2013, or 2014. These requirements are already effective in state law. The proposed rule changes in this rulemaking are administrative in nature and detail the process WDFW will follow in complying with changes to state law to limit geoduck diver licenses to 77 per year.

Other than providing the information required for an application for a geoduck diver license, such as proof of a DNR harvest agreement and proof of diver safety completion, there are no additional reporting and record keeping requirements.

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

These rules provide the process WDFW will use to implement state law limiting the number of geoduck diver licenses to 77 per calendar year. There are no anticipated professional services required to comply with these rule changes.

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

The proposed rule limits the number of geoduck diver licenses to 77 licenses per year as required by HB 1764 and detail the process WDFW will use to ensure the equitable issuance of geoduck diver licenses due to the license limitation. The proposed rules do not require any additional equipment, supplies, labor, or administrative costs as the rules are administrative in nature. Therefore, there are no expected additional costs to comply with the proposed rules.

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

The proposed rules do not affect the harvestable numbers of geoducks available to non-treaty businesses. Therefore, the proposed rules should not cause any businesses to lose sales or revenue.

Since the rules address the limitation of the number of geoduck diver licenses WDFW may issue to 77 licenses per year as required by statute, it is possible that this limitation may impact the ability of a business to engage in geoduck harvest if the business is unable to obtain a license. However, this license limitation is required by statute and these proposed rules simply implement the process WDFW will use to ensure compliance with that limitation.

- 5. Cost of compliance for small businesses compared with the 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**

None - The proposed rules do not require any additional equipment, supplies, labor, or administrative costs. The application fees remain unchanged. Additional costs may be incurred by businesses to meet the qualifications required to be eligible for a license, however, those costs are not determined by these rules and are required by current state law.

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

Most businesses affected by these rules are small individual contractors for small and large businesses. As indicated above, all of the gear restrictions proposed by the rules are identical to gear restrictions WDFW has required in past geoduck seasons. Therefore, these rules will not directly impose new costs on small businesses.

Because the geoduck diver license limitation is already effective via statute, WDFW is unable to reduce costs to small businesses due to that license limitation. These proposed rules are administrative in nature.

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

DNR and WDFW interacted with and received input from the Geoduck Diver Association in passing the underlying legislation (HB 1764) for these rule changes. These meetings allowed the Geoduck Diver Association to participate in formulating the bill that made these rule changes necessary. WDFW will also share the rule language and proposed process for applications for geoduck diver licenses with affected businesses and receive input from those individuals as part of this rulemaking. Affected businesses will also have an opportunity to provide public comment during the public hearing on these rule changes.

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

All individuals wishing to obtain a geoduck diver license will be required to comply with these rules. In general, businesses affected by these rules are small individual contractors for small and large businesses engaged in the seafood processing, wholesale, and retail industry.

- 9. An estimate of the number of jobs that will be created or lost as a result of compliance with the proposed rule.**

These rules are administrative in nature and detail the process WDFW will use to comply with the limitation of geoduck diver licenses to 77 per calendar year by HB 1764, passed by the Legislature in 2013. This limitation is required by statute. These rules simply detail WDFW's process and do not affect that license limitation. Therefore, the rules will not have an impact on job creation or job loss.

WAC 220-52-01901 Commercial geoduck harvest license. (1) It is unlawful to commercially harvest geoducks unless the harvester possesses a valid, director-issued geoduck fishery license or geoduck diver license. A geoduck fishery license card is a "license card" under WAC 220-69-270.

(2) Only persons holding current geoduck harvest agreements from the department of natural resources or their agents may apply for a geoduck fishery license((s)). An application for a geoduck fishery license must be fully completed on a form provided by the department and accompanied by a copy of the geoduck harvest agreement for which the license is sought.

(3) Each geoduck fishery license authorizes the use of two water jets or other units of geoduck harvest gear. Commercial geoduck harvesting gear must meet the requirements of WAC 220-52-019.

(4) Holders of geoduck fishery licenses and geoduck diver licenses must comply with all applicable commercial diving safety regulations adopted by the Federal Occupational Safety and Health Administration established under the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et. seq. Some of these regulations appear at 29 C.F.R. Part 1910, Subpart T.

(a) The director may suspend or revoke a geoduck fishery license or geoduck diver license used in violation of commercial diving safety regulations, including 29 C.F.R. Part 1910, Subpart T, adopted under the Occupational Safety and Health Act of 1970. The procedures of chapter 34.05 RCW apply to these suspensions or revocations.

(b) If there is a substantial probability that a violation of commercial diving safety regulations could result in death or serious physical harm to a person harvesting geoducks, the director may immediately suspend the license until the violation is corrected. If the violator fails to correct the violation within ten days of notice of the violation, the director may revoke the violator's geoduck fishery or geoduck diver license. The director may not revoke a geoduck fishery or geoduck diver license if the holder of the harvesting agreement corrects the violation within ten days of receiving written notice of the violation.

NEW SECTION

WAC 220-52-01904 Commercial geoduck harvest—License application and issuance process for 2015 geoduck diver licenses. To ensure compliance with RCW 77.65.410 and chapter 204, section 2, Laws of 2013 (2SHB 1764), and the equitable issuance of geoduck diver licenses, the department adopts the following provisions to address the limitation of geoduck diver licenses to 77 licenses in 2015:

(1) Effective January 1, 2015, no more than 77 geoduck diver licenses may be issued per calendar year.

(2) Individuals who had first right of refusal for a 2015 geoduck diver license as provided in chapter 204, section 2, Laws of 2013 (2SHB 1764), and indicated his or her intent to purchase a geoduck diver license by January 28, 2014, must apply for a 2015 geoduck diver license prior to 5:00 p.m. on December 1, 2014.

(a) If more than 77 qualified applicants who had first right of refusal apply for a 2015 geoduck diver license prior to 5:00 p.m. on December 1, 2014, the department will conduct a random drawing to determine the applicants who will be issued one of the 77 available geoduck diver licenses.

(b) If the department receives less than 77 applications from qualified "first right of refusal" applicants by December 1, 2014, the department will consider applications to renew licenses as provided in RCW 77.65.410. Those who held a geoduck diver license in 2014 and who were listed on a department of natural resources geoduck harvest plan in 2014, but who did not indicate their intent to exercise a first right of refusal by January 28, 2014, may apply to renew after December 1, 2014, and the department will process those applications on a daily basis, in the order received, up to the renewal deadline of December 31, 2014, until the cap of 77 geoduck diver licenses has been reached. If the department receives more than one application to renew a geoduck diver license in a calendar day, and issuing licenses to all applicants received in that calendar day would exceed 77 geoduck diver licenses, the department will conduct a random drawing among the applications received that calendar day to determine which of the applicants will receive a renewed geoduck diver license for 2015.

(c) If the number of geoduck diver licenses issued to both "first right of refusal" applicants and "renewal" applicants is still less than 77 on January 1, 2015, the department will issue licenses for qualified applicants for a 2015 geoduck diver license in the order the applications are received. However, if the department receives more than one application in a calendar day and issuing licenses to all applicants received in that calendar day would exceed 77 geoduck diver licenses, the department will conduct a random drawing among the applications received that calendar day to determine which of the applicants will receive a geoduck diver license for 2015.

(3) For the purposes of this section, a "qualified applicant" is a person who submits the following when applying for a geoduck diver license:

(a) A complete, legible, and signed application form;

(b) A copy of a department of natural resources (DNR) geoduck harvest agreement plan of operation that lists the applicant on the agreement. The copy of the harvest agreement plan of operation can be from 2011, 2012, 2013, or 2014 for "first right of refusal" applicants, but must be from 2014 for "renewal" applicants;

(c) The application and license fees as provided in RCW 77.65.440; and

(d) For any application received on or after January 1, 2015, proof of completion of the DNR geoduck diver safety program.