



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)

New section, WAC 220-52-01905, Commercial geoduck harvest—Geoduck diver license application and issuance process

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

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

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

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.

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.

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:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: July 02, 2014

TIME: 11:21 AM

WSR 14-14-136

DATE
July 2, 2014

NAME (type or print)
Joanna Eide

SIGNATURE

TITLE
Rules Coordinator

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.

NEW SECTION

WAC 220-52-01905 Commercial geoduck harvest—Geoduck diver license application and issuance process. (1) The department will not consider incomplete applications for a geoduck diver license. The following information is required to apply for or renew a geoduck diver license:

(a) A complete, legible, and signed application form;
(b) The application and license fees as provided in RCW 77.65.440;

(c) Proof of completion of the department of natural resources (DNR) geoduck diver safety program; and

(d) For applications to renew only, a copy of a DNR geoduck harvest agreement plan of operation that lists the applicant on the agreement during the applicable current calendar year.

(2) No more than 77 geoduck diver licenses may be issued per calendar year.

(3) Applicants may submit applications to the department:

(a) By mailing to 600 Capitol Way N., Olympia, WA 98501-1091;

(b) By faxing to 360-902-2945; or

(c) In person at the WDFW licensing front desk, first floor, natural resources building at 1111 Washington St. S.E., Olympia, WA 98501.

(4) The department must receive applications to renew a geoduck diver license by December 31st of the year the licensee's current geoduck diver license expires. If less than 77 geoduck diver licenses have been issued after the department approves all qualifying applications to renew a geoduck diver license, the department will issue additional licenses, up to the 77 geoduck diver license limit, to qualified applicants in the order they are received. If the department receives more than one application for 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 applications received in that calendar day will be issued a geoduck diver license.