



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Washington Department of Fish and Wildlife

Permanent Rule Only

Effective date of rule:

Permanent Rules 14-266

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: This rule proposal makes changes to geoduck diver license rules in response to statute changes that limited the amount of geoduck diver licenses that WDFW may issue per year to 77 licenses beginning January 1, 2015. These changes create a clear, efficient process for the issuance of geoduck diver licenses in a new WAC section, WAC 220-52-01904, as well as making necessary technical changes to WAC 220-52-01901 for clarity.

Reasons supporting proposal: This rule change proposal was discussed during the Fish and Wildlife Commission meeting and public hearing on August 8, 2014. The proposed changes were adopted by the Commission at the September 19, 2014, Commission meeting. The changes provide a clear process for WDFW in issuing geoduck diver licenses in light of the license limitation imposed by the legislature and accomplish necessary technical changes for clarity.

Citation of existing rules affected by this order:

Repealed:
Amended: WAC 220-52-01901
Suspended:

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

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 14-14-135 on July 2, 2014.
Describe any changes other than editing from proposed to adopted version:

The only change to the rules after the CR-102 filing was the removal of references to geoduck diver licenses in WAC 220-52-01901(4), as OSHA requirements do not directly apply to geoduck diver license holders, only to geoduck fishery license holders. The geoduck commercial fishing industry supports the changes to WAC 220-52-10901 and the rule changes in general.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

Date adopted: September 19, 2014

NAME (TYPE OR PRINT)
Miranda Wecker

SIGNATURE

Miranda Wecker

TITLE
Chair, Washington Fish and Wildlife Commission

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 19, 2014
TIME: 9:50 AM

WSR 14-20-008

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	<u>1</u>	Amended	<u>1</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

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.

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 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 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 license. The director may not revoke a geoduck fishery license if the holder of the harvesting agreement corrects the violation within ten days of receiving written notice of the violation.