

Concise Explanatory Statement

Geoduck License Rules – Pre-January 1, 2015 Rules

The following rule is amended as part of this rulemaking:

WAC 220-52-01901 Commercial geoduck harvest license

The following rule is a new rule adopted as part of this rulemaking:

WAC 220-52-01904 Commercial geoduck harvest—License application and issuance process for 2015 geoduck diver licenses.

Summary of reasons for rulemaking:

The department needs these rule changes 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.

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 of Natural Resources and the Washington Department of Fish and Wildlife interacted with and received input from the Geoduck Diver Association in passing the underlying legislation (HB 1764) that made these proposed rule changes necessary. The meetings held regarding HB 1764 allowed the Geoduck Diver Association to participate in formulating the bill.

Explanation of the changes in this rulemaking:

WAC 220-52-01904:

- Creates an equitable process WDFW will follow in issuing geoduck diver licenses to respond to the legislature's change to state law to limit the number of licenses issued by WDFW per year to 77 licenses beginning January 1, 2015.
- Outlines application requirements and new eligibility requirements for a geoduck diver license as required by RCW 77.65.410.
- This rule will operate on a somewhat temporary basis as it will no longer be needed after January 1, 2015. WDFW proposed a more "permanent" new rule in a separate, tandem rulemaking (WSR 14-14-136) that will become effective on January 1, 2015. WDFW will seek a repeal of WAC 220-52-01904 after January 1, 2015.

WAC 220-52-01901

- Changes to this rule are technical and needed for clarity to differentiate between geoduck fishery licenses and geoduck diver licenses.

Differences between the text of the proposed rule and the text of the rule as adopted:

Minor changes were made to WAC 220-52-01901 to remove references to geoduck diver licenses in subsection (4) of that section. Please see the summary of public comments section below for an explanation of those changes.

Summary of comments and WDFW's response to and consideration of the comments:

WDFW included stakeholders in formulating the proposed new license issuance process, and notified stakeholders of the proposed rulemaking as required by the Administrative Procedure Act. The department also shared rule changes with stakeholders and notified holders of geoduck diver licenses and those who indicated their wish to have a first right of refusal for a 2015 geoduck diver license.

Department staff received comments via telephone from industry stakeholders after the rules were filed. These comments were mainly related to concerns about references to geoduck diver licenses in WAC 220-52-01901(4), related to OSHA requirements.

The department held a public hearing at the August Fish and Wildlife Commission meeting on August 8, 2014, and received public comments from members in the geoduck dive industry. Industry members expressed concerns with language in WAC 220-52-01901(4) regarding OSHA requirements applying the geoduck diver licenses. The department researched the issue and met with stakeholders to resolve it. Based on that research and meeting with stakeholders, the department made minor changes to WAC 220-52-01901(4), removing the references to geoduck diver licenses. Though OSHA requirements do apply to geoduck fishery license holders (a separate license), they do not directly apply to geoduck diver license holders, though geoduck diver license holders do share in the responsibility to comply with OSHA due to the way the industry functions.