



EXPEDITED RULE MAKING

CR-105 (October 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON
FILED

DATE: November 01, 2017

TIME: 9:33 AM

WSR 17-22-131

Agency: Washington Department of Fish and Wildlife (WDFW)

Title of rule and other identifying information: (describe subject) Updating the term Wholesale Fish Dealer to Wholesale Fish Buyer in WAC 220-360-140

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Updating the term Wholesale Fish Dealer to Wholesale Fish Buyer in WAC 220-360-140. The term was changed in House Bill 1597 during the 2017 legislative session effective January 1, 2017.

Reasons supporting proposal: Due to a clerical error, this rule amendment did not get published in the most recent version of the Washington State Register. This amendment was adopted by the Fish and Wildlife Commission on October 27, 2017..

Statutory authority for adoption: RCW 77.04.090, RCW 77.04.130, RCW 77.15.568, RCW 77.08.010, RCW 77.65.510, RCW 77.65.515, RCW 77.65.520

Statute being implemented: RCW 77.08.010, RCW 77.12.170, RCW 77.12.177, RCW 77.15.096, RCW 69.04.933, RCW 69.04.934, RCW 77.15.110, RCW 77.15.170, RCW 77.15.500, RCW 77.15.565, RCW 77.15.620, RCW 77.15.630, RCW 77.15.640, RCW 77.65.010, RCW 77.65.020, RCW 77.65.090, RCW 77.65.110, RCW 77.65.120, RCW 77.65.150, RCW 77.65.160, RCW 77.65.170, RCW 77.65.190, RCW 77.65.200, RCW 77.65.210, RCW 77.65.220, RCW 77.65.240, RCW 77.65.280, RCW 77.65.310, RCW 77.65.320, RCW 77.65.330, RCW 77.65.340, RCW 77.65.350, RCW 77.65.370, RCW 77.65.390, RCW 77.65.440, RCW 77.65.480, RCW 77.65.490, RCW 77.65.500, RCW 77.65.510, RCW 77.15.160, RCW 77.65.580, RCW 77.65.590, RCW 77.70.150, RCW 77.70.190, RCW 77.70.220, RCW 77.70.280, RCW 77.70.290, RCW 77.70.300, RCW 77.70.430, RCW 77.70.490, RCW 82.27.020, RCW 82.27.070, RCW 69.07.100, RCW 36.71.090

Is rule necessary because of a:

- Federal Law? Yes No
- Federal Court Decision? Yes No
- State Court Decision? Yes No

If yes, CITATION:

Name of proponent: (person or organization) WDFW

- Private
- Public
- Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Trisha Anderson	1111 Washington Street, Olympia, WA 98501	(360) 902-2211
Implementation:	Peter Vernie	1111 Washington Street, Olympia, WA 98501	360) 902-2302
Enforcement:	Chief Steve Bear	1111 Washington Street, Olympia, WA 98501	(360) 902-2936

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): Based on the rationale of RCW 34.053(e), the department believes that an expedited rule-making process is appropriate because the process involved substantial participation in the 2017 legislative session by interested parties before the rule was developed.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

Name: Scott Bird

Agency: Washington Department of Fish and Wildlife

Address: 600 Capitol Way N

Phone: (360) 902-2403

Fax: (360) 902-2155

Email: Rules.Coordinator@dfw.wa.gov

Other:

AND RECEIVED BY (date) January 2, 2018

Date: November 1, 2017

Name: Scott Bird

Title: Rules Coordinator

Signature:

Scott Bird

WAC 220-360-140 Identification of wild stocks of clams, mussels, or oysters—Reporting requirements for the commercial harvest of wild clams, mussels, or oysters from nonstate aquatic lands—Conversion to private sector cultured aquatic products. (1) Based upon RCW 15.85.020(3), the following shellfish are distinguished from private sector cultured aquatic products and are identified as wild stocks that are regulated under this chapter:

(a) All clams, mussels, or oysters that were not propagated, farmed, or cultivated under the active supervision and management of a private sector aquatic farmer; and

(b) All clams, mussels, or oysters that were set naturally prior to the time an aquatic farm was established and placed under the active supervision and management of a private sector aquatic farmer.

(2) Examples of harvested wild stocks of shellfish include, but are not limited to, the following:

(a) Any harvest of clams, mussels, or oysters from a site that is not registered as an aquatic farm unless there is some ability to demonstrate that the shellfish was propagated, farmed, or cultivated under the active supervision of an aquatic farmer;

(b) Any harvest of clams, mussels, or oysters that were naturally set prior to the time an aquatic farm was established at the site and placed under the active supervision and management of an aquatic farmer; and

(c) Shellfish that is harvested from a newly registered aquatic farm during a period when the shellfish is presumed to come from a wild stock as specified in subsection (5) of this section.

(3) ~~((The sale of))~~ It is unlawful to sell wild stocks of clams, mussels, and oysters ~~((must be))~~ unless properly reported ~~((through the use of))~~ on a shellfish receiving ticket~~((s))~~. The failure to report the sale of shellfish with a fish receiving ticket when it is required is unlawful activity and constitutes a violation of WAC 220-352-020 and RCW 77.15.630. Any person selling wild stocks of clams, mussels, and oysters must sell the harvest to a ~~((licensed))~~ Washington wholesale fish ~~((dealer))~~ buyer, who is then required to complete the fish ticket. Alternatively, if the person harvesting the clams, mussels, or oysters sells this shellfish at retail or arranges for the harvested shellfish to be transported out-of-state, they must be a ~~((licensed))~~ wholesale ~~((dealer))~~ fish buyer and must complete a fish receiving ticket for each day's sales or for each shipment.

(4) Wild stock sales may not be reported on aquatic farm quarterly production reports. Only private sector cultured aquatic products may be reported on quarterly production reports.

(5) The following shellfish are presumed to be wild shellfish that are subject to these regulations:

(a) All mussels, oysters, and clams other than geoducks that are commercially harvested from the nonstate lands within the first twelve months after a complete application for the aquatic farm registration is filed; and

(b) All geoducks commercially harvested from the nonstate lands within the first thirty-six months after a complete application for the aquatic farm registration is filed.

The presumption that shellfish harvested from a newly registered aquatic farm during these time periods are from wild stocks may be overcome by a showing that the harvested shellfish were actually propagated, farmed, or cultivated under the active supervision of an aquatic farmer. After twelve or thirty-six months, respectively, all shellfish produced from a registered aquatic farm will be presumed to be private sector cultured aquatic products, and must be reported on quarterly aquatic farm reports. If a person does not commercially harvest mussels, oysters, or clams other than geoducks for the first twelve months after the aquatic farm registration, or does not commercially harvest geoducks for the first thirty-six months after registration, there is no requirement to obtain an emerging commercial fishery license or trial fishery permit.