

# **Concise Explanatory Statement**

## **Forage Fish, Marine Fish, and Shellfish Rule Simplification**

### **Rules amended as part of this rulemaking:**

WAC 220-315-010	Forage fish-Lawful gear
WAC 220-315-030	Smelt-Areas and seasons
WAC 220-310-160	Daily limits forage fish and other food fish not otherwise provided for
WAC 220-300-040	Definitions-Bottomfish
WAC 220-300-130	Definition-Forage fish
WAC 220-300-370	Food fish-Classification
WAC 220-330-010	Shellfish—Daily limits.
WAC 220-330-020	Personal-use shellfish gear—Unlawful acts.
WAC 220-330-040	Crab—Areas and seasons—Personal use.
WAC 220-330-070	Shrimp—Areas and seasons.
WAC 220-330-090	Crawfish, sea urchins, sea cucumbers, goose barnacles—Areas and seasons, personal-use fishery.
WAC 220-330-120	Clams, oysters, mussels—Unlawful acts.
WAC 220-330-150	Oysters and clams on private tidelands—Personal use.
WAC 220-320-060	General provisions—Shellfish.
WAC 220-314-020	Possession limits-Bottomfish.
WAC 220-314-030	Halibut – Seasons-daily and possession limits.
WAC 220-314-040	Lingcod – Areas and seasons

### **Rules repealed as part of this rulemaking:**

WAC 220-330-030	Personal-use crab pot gear requirements.
WAC 220-330-050	Crab—Unlawful acts—Personal use.
WAC 220-330-060	Personal-use shrimp pot gear requirements.
WAC 220-330-080	Shrimp containers.
WAC 220-330-100	Personal-use crab, shrimp, crawfish—Unlawful acts.
WAC 220-330-130	Oysters and scallops—Gear.
WAC 220-330-180	Squid, octopus.
WAC 220-300-300	Geographical definitions—District 1.
WAC 220-300-310	Geographical definitions—District 2.

### **Rules created as part of this rulemaking:**

None

#### **1. Background/Summary of Project:**

The Department has embarked on efforts to simplify sport regulations while meeting critical conservation needs and recreational opportunities for forage fish, marine fish, and shellfish. This process was formally initiated in June 2019 and proposals were posted on the agency website from September through October 17, 2019, with accompanying outreach efforts. The Fish and Wildlife Commission was briefed on staff proposals during the October 18, 2019 meeting and

public hearing in Olympia. Staff requested a decision on the proposal at the December 13, 2019 meeting in Bellingham and the Commission adopted the rules at that time.

## Forage Fish Rule Simplification

### # 1. Technical changes

#### Type of Rule Change Proposal

Conservation

#### Short Description

Corrects Washington Administrative Code language to reflect rules adopted by the Commission (technical changes). Formats the language structure and removes redundant language.

#### Explanation

This proposal is a technical fix to provide simplified language reflective of Commission intent, and to streamline the information by reducing redundant language in multiple WACs. See Table.

Number	Issue	Details
1	Organization of WAC	Move some elements within WAC's and eliminated redundant sections.
2	Lack of freshwater forage fish limit	Define the freshwater limit for forage fish stated in WAC to align the Puget Sound and Coastal limit.
3	Simplify language	Remove redundant language and use more concise descriptions and/or terminology for gear, species, and closures.

#### Written Testimony (1 comments)

Support (0): No comments

Oppose (0): No comments.

General (1): Commenter would like the removal or the restriction "lures only" at Titlow Beach Marine Preserve.

#### Public Hearing (0 comments)

**Modifications:** None

**Staff Recommendation:** Adopt as presented

**Commission Action:** Adopted

# Marine Fish Rule Simplification

## # 1. Changes to bottomfish regulations in Marine Area 4 (east of the Bonilla-Tatoosh line)

### Type of Rule Change Proposal

Recreational

### Short Description

This rule proposal would align recreational bottomfish regulations in Marine Area 4 (east of the Bonilla-Tatoosh line, also referred to as Marine Area 4B), with recreational bottomfish regulations in Marine Area 4 (west of the Bonilla-Tatoosh line).

Changes to **WAC 220-314-020**, which describes possession limits for bottomfish, includes: reducing the aggregate daily bottomfish limit from 10 to nine, increasing the rockfish sublimit from six to seven per day, allowing 12 surfperch per day, and removing the lingcod and cabezon size limits. Species allowed within the rockfish sublimit would include yellowtail rockfish and widow rockfish in addition to the current allowance for black rockfish and blue/deacon rockfish. Changes to **WAC 220-314-030** would allow anglers to retain yellowtail rockfish and widow rockfish seaward of a line approximating 20 fathoms on days open to recreational salmon fishing in July and August.

Changes to **WAC 220-314-040** would open the lingcod fishery from the second Saturday in March through the Second Saturday in October in Marine Area 4B, which is the same as the lingcod season in Marine Area 4 and clarifies that Marine Area 12 is closed to lingcod fishing year-round.

Throughout these WAC's, additional technical changes have been made to refer to management areas as Marine Area rather than Catch Record Card Area and replaces blue rockfish with blue/deacon rockfish.

### Explanation

These proposed changes would simplify regulations in two management areas that are adjacent to one another and commonly fished during a single trip. Revising the regulations for Marine Area 4B so they are similar to Marine Area 4 makes it easier for recreational anglers to understand the rules. Stock assessments conducted by the National Marine Fisheries Service and adopted by the Pacific Fishery Management Council for federally managed areas west of the Bonilla-Tatoosh line (Marine Area 4) include catch and biological data from species in the area east of the Bonilla-Tatoosh line (Marine Area 4B). These regulatory proposals provide anglers with additional access to healthy bottomfish resources without substantially increased risk of over harvest.

### Written Testimony (2 comments)

Support (0): No comments

Oppose (1): A commenter was concerned about the rule language and possible unintended consequences.

General (1): A commenter would like a change in the way halibut fishing days are done.

**Public Hearing** (0 comments)

**Modifications:** None

**Staff Recommendation:** Adopt as presented

**Commission Action:** Adopted

## # 2. Technical changes

### Type of Rule Change Proposal

Conservation

### Short Description

Corrects Washington Administrative Code language to reflect rule adoptions made by the Commission (technical changes). Formats the language in a clear structure, removes redundant language, etc.

### Explanation

This proposal is a technical fix to streamline the information by reducing redundant language in multiple WACs. See Table below:

Number	Issue	Details
1	Definition of "bottomfish"	<b>Reorganized language in WAC 220-300-040</b> so that the list refers first to individual species that tend to be preferred fishery targets and then to "all other species" of several taxonomic groups.
2	Updating food fish names	<b>Updated names used in WAC 220-300-370</b> so that broad group names are used (e.g., Flatfishes) in place of more specific, word labels (e.g., Flounder, sole, and halibut). Reorganized the list to merge all categories with a single species into the shared category titled "Other." Corrected spelling and use of several names.
3	Eliminate unused geographic definitions	<b>Eliminated WAC 220-300-300 and -310 entirely because they are not referred to anywhere in WAC or RCW.</b> These WACs created two geographic marine regions in Washington in 1954, but new areas were subsequently created. The old areas have not been used since at least 1982.

### Written Testimony

 (0 comments)

Support (0): No comments

Oppose (0): No comments.

General (0): No comments

### Public Hearing

 (0 comments)

**Modifications:** None

**Staff Recommendation:** Adopt as presented  
**Commission Action:** Adopted

## Shellfish Rule Simplification

### # 1. Daily limits for green urchins, purple urchins, red urchins, pink scallops, spiny scallops, and sea cucumbers.

**Type of Rule Change Proposal**  
Recreational

**Short Description**

This rule proposal streamlines daily limits for all urchins as uniformly 18 urchins, as 18 for sea cucumbers, and from a weight-based daily limit (10 lbs.) to a quantity-based limit of 40 for pink scallops and spiny scallops.

**Explanation**

Currently management of urchins uses two different daily limits (18 for red urchins and purple urchins and 36 for green urchins). This proposal reduces the daily limit of green sea urchins from 36 to 18 to align with other urchin species. It reduces the daily limit of sea cucumbers from 25 to 18 for simplicity. For pink scallops and spiny scallops, the Department is proposing a quantity-based daily limit in lieu of a weight-based daily limit. Quantity based limits are easier for harvesters to comply with in the field. Weight-based daily limits require that animals are first taken to the surface and weighed, presenting enforcement and logistical challenges. A total of 40 aligns with existing daily limits for clams for simplicity. Instituting streamlined daily limits is a simplification and the proposed limits align with conservation objectives.

**Written Testimony** (0 comments)

Support (0): No comments

Oppose (0): No comments.

General (0): No comments

**Public Hearing** (0 comments)

**Modifications:** None

**Staff Recommendation:** Adopt as presented

**Commission Action:** Adopted

## # 2. Define size limits for pink scallops, spiny scallops, and urchins

### Type of Rule Change Proposal

Recreational

### Short Description

This rule proposal would make it unlawful to take or possess pink scallops, spiny scallops, green urchins, purple urchins, or red urchins below a minimum size limit for conservation purposes.

### Explanation

Currently, minimum size limits for pink scallops, spiny scallops, green urchins, purple urchins, and red urchins are undefined for recreational fisheries. Proposed minimum size limits (and a maximum size limit for red urchins) will preserve opportunity for the affected species to reproduce prior to harvest-- a conservation measure currently instituted by co-managed state and tribal commercial fisheries. Proposed minimum size limits are: 2 inches (pink scallops, spiny scallops), 2 ¼ inches (green urchins, purple urchins), and 3 ¼ inches (red urchins). A maximum size limit of 5 inches is proposed for red urchins to conserve the largest reproductive animals.

### Written Testimony (0 comments)

Support (0): No comments

Oppose (0): No comments.

General (0): No comments

### Public Hearing (0 comments)

**Modifications:** None

**Staff Recommendation:** Adopt as presented

**Commission Action:** Adopted

## # 3. Define closure areas for recreational sea cucumber and urchin fisheries

### Type of Rule Change Proposal

Recreational

### Short Description

This proposal would make it unlawful to fish for sea cucumbers and sea urchins in 8 conservation closure areas throughout Puget Sound.

### Explanation

These closure areas serve as reference areas supporting monitoring of population status, and as conservation measures to protect spawning stock distributed throughout Puget Sound. This conservation proposal permits the long-term sustainable management of sea cucumber and sea urchin fisheries and aligns with co-management of urchins and sea cucumbers in Puget Sound.

**Written Testimony** (0 comments)

Support (0): No comments

Oppose (0): No comments.

General (0): No comments

**Public Hearing** (0 comments)

**Modifications:** None

**Staff Recommendation:** Adopt as presented

**Commission Action:** Adopted

## # 4. Eliminate requirement to retain eastern softshell clams

**Type of Rule Change Proposal**

Recreational

**Short Description**

This proposal eliminates the requirement to retain eastern softshell clams dug as bycatch.

**Explanation**

Eastern softshell clams are sometimes encountered by harvesters as bycatch when targeting other clam species. The current rule requires that eastern softshell clams be retained when encountered as bycatch, counting toward the aggregate daily limit. This rule proposal eliminates the requirement to retain eastern softshell clams encountered as bycatch, but clams will still count toward daily limit if retained. This species is a non-native (but not considered to be invasive) species not often targeted by harvesters. The Department proposes to strike this requirement as a simplification; there is no conservation need for this rule.

**Written Testimony** (1 comment)

Support (1): Consideration should be given to allow a bonus retention of the eastern softshell clam similar to Atlantic salmon or other unwanted species.

Written Testimony (0 comments)

Support (0): No comments

Oppose (0): No comments.

General (0): No comments

**Public Hearing** (0 comments)

**Modifications:** None

**Staff Recommendation:** Adopt as presented

**Commission Action:** Adopted

## # 5. Clarify lawful gear for intertidal harvest of geoduck

### Type of Rule Change Proposal

Recreational

### Short Description

This proposal clarifies that the use of a cylindrical can or tube is lawful gear for the harvest of geoduck and describes a lawful maximum diameter.

### Explanation

The harvest of intertidal geoduck is commonly conducted with the assistance of a tube or cylinder to temporarily prevent clam-digging holes from caving in. There is not currently a conservation concern with this practice as long as holes are filled in after use. This rule seeks to clarify that this is a lawful gear type, to define the gear, and to define a maximum permissible diameter for tubes or cylinders as 24".

### Written Testimony (0 comments)

Support (0): No comments

Oppose (0): No comments.

General (0): No comments

### Public Hearing (0 comments)

**Modifications:** None

**Staff Recommendation:** Adopt as presented

**Commission Action:** Adopted

## # 6. Define a caliper measurement

### Type of Rule Change Proposal

Recreational

### Short Description

Clarifies regulations regarding the definition of a caliper measurement as a linear measurement when both points of a movable caliper are touching the shell of the shellfish. A fixed caliper gauge is the linear distance between points of the caliper gauge or the diameter of a circular gauge.

### Explanation

Currently the definition of a caliper measurement, originally referred to in 220-330-050 and in the proposed consolidated 220-330-010, is undefined.

### Written Testimony (0 comments)

Support (0): No comments



Oppose (0): No comments.  
General (0): No comments

**Public Hearing** (0 comments)

**Modifications:** None  
**Staff Recommendation:** Adopt as presented  
**Commission Action:** Adopted

## # 7. Define lawful pot escapement component fibers

**Type of Rule Change Proposal**  
Recreational

### **Short Description**

This rule proposal clarifies regulations regarding the definition of lawful fibers which can be used in attaching pot escapement components to shellfish pots.

### **Explanation**

Currently, WAC 220-330-020 describes lawful attachment of pot lid or pot side serving as pot lid as consisting of "...100 percent cotton or *other natural fiber twine*..." This clarification seeks to define *other* acceptable fiber types for attachment of escapement component to pots as hemp, jute, or sisal (in addition to 100% cotton) twine. Research conducted by the Northwest Straits Initiative and WDFW has indicated that these "other" fiber types exhibit degradation time similar to 100% cotton twine, sufficient to allow for expedient de-activation of derelict pot gear (Redekopp et al. 2006).

**Written Testimony** (0 comments)

Support (0): No comments  
Oppose (0): No comments.  
General (0): No comments

**Public Hearing** (0 comments)

**Modifications:** None  
**Staff Recommendation:** Adopt as presented  
**Commission Action:** Adopted

## # 8. Technical changes

**Type of Rule Change Proposal**  
Conservation

### **Short Description**

Proposals correct Washington Administrative Code language to reflect rule adoptions made by the Commission (technical changes). Formats and streamlines the language, removes redundant language, reorganizes chapter to improve structure.

### Explanation

This proposal is a technical fix to streamline the information by reducing redundant language in multiple WACs. See Proposals Table.

Number	Issue	Details
1	Eliminate redundant language	Eliminate redundant language in WAC 220-330 individual section titles.
2	Re-organize WAC 220-330-010	Consolidate all shellfish daily limits, size restrictions, and non-gear-related unlawful acts provisions to WAC 220-330-010. Rename section Shellfish—Daily limits, size restrictions, and unlawful acts. Delete redundant language. Alphabetize section by taxa. Identify each relevant WDFW Marine Area for clarification. Update formatting for consistency. Preserve all relevant RCW references.
3	Shellfish daily limits--consolidate	Consolidate all shellfish daily limits into WAC 220-330-010, including from 220-330-180 and 220-320-060 (5) (relic shells). Add clarifying language in several subsections.
4	Shellfish minimum size limits—consolidate and clarify.	Consolidate all shellfish minimum size limits into re-organized 220-330-010, including from 220-330-050. Clarify that there is no minimum size for all relevant species. Add clarifying language in several subsections.
5	Shellfish unlawful acts—consolidate.	Consolidate all non-gear-related unlawful acts into re-organized 220-330-010, including from 220-330-050, -080, -090, -120, and -180. Add clarifying language in several subsections.
6	Add relevant WAC cross-reference for crawfish	Add a cross-reference to existing rules (Chapter 220-640 WAC) regarding take and possession of non-native (invasive) crawfish species, which is applicable to personal use fisheries.
7	Re-organize WAC 220-330-020	Consolidate all personal pot fishery shellfish gear and gear-related unlawful act provisions to WAC 220-330-020, including from 220-330-030, -060, and -100. Rename section Crab, shrimp, crawfish—Gear and gear-related unlawful acts. Rewrite general pot rules for simplicity and add clarifying language in several subsections. Eliminate redundant language. Re-organize by fishery. Preserve all relevant RCW references.
8	Re-organize WAC 220-330-090	Consolidate areas and seasons for crawfish, sea urchins, sea cucumbers, goose barnacles, scallops, squid, and octopus into

		one WAC. Rename section Crawfish, sea urchins, sea cucumbers, goose barnacles, scallops, squid, octopus—Areas and seasons. Add language to clarify existing areas and seasons.
9	Re-organize WAC 220-330-120	Consolidate all non-pot fishery gear and gear-related unlawful acts for clams, oysters, mussels, scallops, sea urchins, sea cucumbers, squid, and octopus, including from WAC 220-330-090, -120, -130, and -180. Re-organize by fishery. Add clarifying language in several subsections. Preserve all relevant RCW references.
10	Add coordinates	Add coordinates to geographical references in WACs 220-330-040, 220-330-090, 220-330-100. Correct one incorrect coordinate in 220-330-180 (c)-(v). Make all coordinate formatting consistent throughout WAC chapter. Clarifying language is proposed for several geographical references in the chapter.
11	Updating language referencing exemption	Updating WAC references describing exemption in WAC 220-330-150 to reflect the consolidation and re-organization being proposed for this chapter and reference the correct WACs.
12	Clarifying language pertaining to possession of cleaned crab in the field	WAC 220-320-060: Editing language to clarify that it is lawful to clean crab in the field, as long as the back shell is retained. Existing language prohibits cleaning of crab in the field.
13	Remove redundant reference to Hood Canal shrimp gear salvage permit	WAC 220-330-100: Language is outdated. Gear salvage program is outlined in RCW 77.12.870.
14	Correct RCW references and violation clauses	Correct several incorrect RCW references and violation clauses, including in WAC 220-330-040, -100, -120- and 130.
15	Eliminate now redundant sections	Repeal WAC sections that are now redundant after consolidation, including 220-330-030, -050, -060, -080, -100, -130, -180.

**Written Testimony** (1 comments)

Support (0): No comments

Oppose (0): No comments.

General (1): The commenter would like there to be one definition for Possession limit for both finfish and shellfish. The commenter also suggests preserving the word “apparently” in describing relic shell as having died of natural causes.

**Public Hearing** (0 comments)

**Modifications:** Modify originally proposed language in WAC 220-330-150 (Exemption for shellfish harvest on private tidelands). Further improves clarity, consistency with RCW

**Staff Recommendation:** Adopt as presented:

**Commission Action:** Adopted

## **2. Reasons for adopting the rule:**

Staff recommend adoption of forage fish, marine fish, and shellfish sport fishing rule simplification as proposed, with two modifications: one to proposed language changes to shellfish WAC 220-330-150 referencing exemption for take of shellfish for personal use by private tideland owners, from private tidelands (clerical change). The proposed modification would use language that further improves clarity and consistency with relevant RCW (77.12.047) and does not alter current regulation. Additionally, WACs pertaining to oyster and clam seasons have been withdrawn from this process due to timing conflict with the current annual season-setting process. Clerical change proposals to those WACs (220-330-110 and 220-330-140) will be included in the current season-setting process and will remain unchanged from the proposal presented at the October 17, 2019 Fish and Wildlife Commission meeting. These clerical changes do not alter the sport fishing rules pamphlet or the intent of existing regulation.

## **3. Differences between the text of the proposed rule and the rule as adopted:**

- a. Modify originally proposed language in WAC 220-330-150 (Exemption for shellfish harvest on private tidelands).
  - i. Further improves clarity, consistency with RCW
- b. Oyster and clam seasons WACs (22-330-110, -140) have been withdrawn due to timing conflict with annual season-setting.
  - i. Clerical proposals from October 2019 will be included, unchanged as part of season-setting process.

## **4. Public comments, response to comments, and consideration of comments**

Forage Fish – Public Meeting Comments: None

Number attendees at Public Meeting: Zero

Written Comments: “As set forth in the Sport Fishing Pamphlet under Marine Area 13 and specifically under the Titlow Beach Marine Preserve delete the requirement for using lures only.

There would appear to be no biological basis for that requirement as fishing is limited to salmon and use of a rigged herring off a beach is a viable fishing method especially under a float.

Furthermore, the definition of bait under 220-56-100 includes scents. Again, with the goal of simplifying the regulations please consider this recommended change.”

- o Staff considered this comment, but the comment pertains to the use of herring as bait and the definition of bait while the purpose of the current process pertains to the simplification of rules relating to the harvest of forage fish (which include herring), but not to the use of forage fish as bait. Since the rules being considered for modification do not affect the use of forage fish as bait or the definition of

bait, we did not modify our proposal in response to this comment.

Marine Finfish – Public Meeting Comments: None

Number attendees at Public Meeting; Zero

Written Comments: 2

- 1 (Opposed) A commenter was concerned about the rule language and possible unintended consequences.
- Response: Staff contacted this commenter to explain the proposed rule changes and clarify the intent. The commenter was satisfied with the explanation and revised his opposition to the changes to indicate support for them.
- 1 (General) Commenter would like to see the halibut season changed to 3 to 4 consecutive days.
- Response: Staff took note of these comments although changes to Pacific halibut seasons were not part of the scope of this rule making.

Shellfish – Public Meeting Comments: None

Number attendees at Public Meeting: Zero

Written Comments: 2

- 1 (Support): Consideration should be given to allow a bonus retention of the eastern softshell clam similar to Atlantic salmon or other unwanted species.
  - Staff considered this comment, a bonus bag limit program for this species has been tried previously and presented challenges. Staff had concerns about the difficulty in identifying this species from other species that have a similar appearance in earlier life stages. As the Eastern softshell is not considered “invasive,” staff did not agree that there was an urgency to pursue a control program.
- 2 (Oppose): Commenter would like to see one definition for possession limit for shellfish and finfish and clarification on softshell crab and relic shell rules.
  - Staff contacted the commenter and had lengthy discussion via email and in-person. There are plans to address the softshell crab rule proposal during an upcoming commercial rule update process. Agency Enforcement was consulted as to the relic shell proposal (and that they did not share the commenter’s concern with the agency proposal). The possession limit language the commenter proposed will be explored

with Enforcement for potential inclusion in a future package.