

**Item #6 : WAC Overhaul Technical Amendments and Repeal – Batch 6 –
Rule Action**

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Summary

Meeting dates:	November 8-9, 2013
Agenda item:	WAC Overhaul Technical Amendments and Repeal, Batch 6 Rule Action
Presenter(s):	Joanna Eide, Administrative Regulations Analyst

Background summary:

A WAC overhaul project is currently underway to update, reorganize, and streamline the department's administrative code. The department's RCWs were combined and updated after the department of wildlife and the department of fisheries merged into one department, but the WACs of the respective agencies were never consolidated and streamlined. This resulted in disorganization, redundancy and lingering outdated rules and references to the former departments.

The department's administrative code needs to be updated, reorganized, and consolidated under one WAC title. To accomplish the reorganization, the department has brought several batches of technical rule changes to the Commission to increase clarity, uniformity, adequacy, and accuracy of department rules, and to repeal outdated and unnecessary rules. These batches of rule changes are to prepare for the renumbering and reorganization of the department's WACs. This agenda item is to brief the Commission and hold a public hearing on the sixth batch of technical rule changes associated with the WAC Overhaul.

The proposal amends WAC sections to update, clarify, and consolidate rules relating to sampling data and tag recovery, personal use shellfish, salmon quick reporting, and treaty Indian fishing gear. The proposal includes corrections to WAC subsection and RCW references, and repeals several outdated and unnecessary rules. Minor technical changes to language were made to some rules within the rule package. Those changes were discussed during the Commission briefing in October.

The department is withdrawing the proposed amendments to WAC 220-56-112 and the repeal of WAC 232-12-082 so a more comprehensive rewrite of those rules can be done at a later date. These rules still appear in the CR-102 filing documents, but will be withdrawn before filing the CR-103P with the Code Reviser.

Policy issue(s) you are bringing to the Commission for consideration: None. The proposed changes in this rulemaking project are technical in nature.

Public involvement process used and what you learned: A public hearing was held in conjunction with the Commission briefing during the October Fish and Wildlife Commission Meeting. The department also sent notification of proposed rule changes to members of the public who indicated that they wished to be notified of proposed rule changes. No public testimony or written comments were received.

The department contacted several industry stakeholders to verify their support of repealing

rules containing outdated hearing processes relating to commercial license moratoriums. The department proposes repealing those rules as individuals affected by commercial license moratoriums may request a hearing under the Administrative Procedure Act. All stakeholders contacted support the repeal.

Action requested: Adopt the rule amendments and repeals as proposed by the department.

Draft motion language: “I move to adopt the amendments to 220-56-315, 220-47-001, and 220-47-121, and repeal chapter 220-85 WAC, WAC 220-28-010, and 232-12-099 as proposed by the department.”

Justification for Commission action: Rule language is supposed to be efficient, clear, legally adequate and accurate. The proposed amendments are in accordance with and will promote these goals, while avoiding changes to the underlying meaning of the rules. The consolidation of rules and the repeal of outdated rules in this proposal will promote clarity and efficiency in WDFW’s administrative code.

Communications Plan: This rule proposal is listed on the department’s website on the Current Rule Making Activities page. The department sent notification of the rule change proposal to members of the public who expressed interest in receiving notification of proposed rule changes. The department also shared rule changes with stakeholders when relevant. Because the rule changes in this proposal are largely technical in nature, no extensive formal communications plan was needed.

Form revised 12/5/12



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

<input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR <u>12-20-073</u> ; or	<input checked="" type="checkbox"/> Original Notice
<input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____; or	<input type="checkbox"/> Supplemental Notice to WSR _____
<input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).	<input type="checkbox"/> Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject) The title of this project is "Technical WAC amendments and repeal, Round 6 (Changes to WAC titles and some structural changes)" as found on the department's rulemaking activity web page. The following WAC sections and chapters are involved in this project:

- WAC 220-47-001, Puget Sound salmon – Quick reporting;
- WAC 220-47-121, Treaty Indian gear identification;
- WAC 220-56-112, Sampling data and tag recovery;
- WAC 220-56-315, Personal use crab, shrimp, crawfish – Unlawful acts;
- WAC 232-12-082, Collection of sampling data – Unlawful acts;
- WAC 232-12-099, Treaty Indian fishing gear identification;
- Chapter 220-28 WAC, Emergency regulations; and
- Chapter 220-85 WAC, Commercial license moratorium advisory review board regulations.

Hearing location(s):

Natural Resources Building,
First Floor, Room 172
1111 Washington St. SE
Olympia, WA 98504

Date: October 4-5, 2013 Time: 8:30 a.m.

Submit written comments to:

Name: Joanna Eide
Address: Enforcement Program
600 Capitol Way N., Olympia, WA 98501
E-mail: Joanna.Eide@dfw.wa.gov
Fax: (360) 902-2155 by (date) September 27, 2013

Assistance for persons with disabilities: Contact:

Tami Lininger by September 25, 2013
TTY (800) 833-6388 or (360) 902-2267

Date of intended adoption: On or after November 8, 2013
(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This proposed rule-making is to streamline, reorganize, and update rules in accordance with the WAC Overhaul Project currently underway. The Washington Department of Fish and Wildlife's (WDFW's) administrative code is in need of updating and consolidation. The agency's RCWs were combined and updated after the department of fisheries and the department of wildlife consolidated, but a consolidation, clean-up, and streamlining of the administrative codes was never done. These proposed changes are part of a larger effort to reorganize and update the agency's administrative code. Anticipated effects are minimal; this project involves correcting, rewording, clarifying, and reorganizing rules already in existence, as well as repealing outdated and unnecessary rules.

Reasons supporting proposal: WDFW needs these changes to increase efficiency, functionality, and clarity of the rules within WDFW's administrative code. The changes promote increases in conservation and the availability of resources, and they reduce redundancy. The proposal is part of WDFW's WAC Overhaul Project to streamline, update, and reorganize WDFW's administrative code.

Statutory authority for adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

Statute being implemented: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If yes, CITATION:		

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: July 03, 2013
TIME: 9:35 AM

WSR 13-14-118

DATE

July 3, 2013

NAME (type or print)

Joanna Eide

SIGNATURE

TITLE

Administrative Regulations Analyst

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.....	Joanna Eide	1111 Washington St. SE, Olympia, WA 98504	(360) 902-2403
Implementation.....	Deputy Chief Mike Cenci	1111 Washington St. SE, Olympia, WA 98504	(360) 902-2938
Enforcement.....	Chief Bruce Bjork	1111 Washington St. 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:

Address:

phone () _____

fax () _____

e-mail _____

No. Explain why no statement was prepared.

This proposed rule-making will not affect small businesses.

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: Please explain: These proposals do not involve hydraulics.

Small Business Economic Impact Statement

1. Description of the reporting, record keeping, and other compliance requirements of the proposed rule:

This proposed rule change contains requirements for small business commercial fishers, fish processors, and small businesses engaged in commercial activity involving fish or wildlife to comply with the directions of authorized department personnel related to the collection of sampling data. Additionally, the proposal contains provisions that require any person or entity, terms that include small businesses, to relinquish upon request to the department any fish tag or any part of a salmon, steelhead, or other fish containing coded wire tags, including snouts of hatchery-raised salmon and steelhead.

Though the proposal includes the requirements listed above, the requirements are not new. The proposal amends WAC 220-56-112, Sampling data and tag recovery, to incorporate the provisions of WAC 232-12-082, Collection of sampling data – Unlawful acts, to make one general rule relating to the collection of sampling data for both fish and wildlife.

2. Kinds of professional services that a small business is likely to need in order to comply with such requirements:

There are no professional service requirements for a small business to comply with the requirements.

3. Costs of compliance for businesses, including costs of equipment, supplies, labor, and increased administrative costs:

The costs of compliance with the provisions within the proposal may be in employee/owner working time, but any costs will be negligible. Complying with department requests for the collection of sampling data, material, or coded wire tags from fish and wildlife will take only a small amount of time and do not require additional equipment, supplies and labor.

4. Will compliance with the rule cause businesses to lose sales or revenue?

No. Compliance with department requests for the collection of sampling data, material, or coded wire tags from fish and wildlife will not cause businesses to lose sales or revenue because it will not result in loss of product. Compliance with department requests only requires that the business turn over coded wire tags and other sampling data and material upon department request, which are generally small amounts of material and should not result in losses to sales or revenue. However, noncompliance results in a rule violation and is punishable as a gross misdemeanor under RCW 77.15.360 with a penalty of up to 364 days of jail time, up to a \$5,000 penalty, or both.

5. 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.**

The costs of complying with department requests for the collection of sampling data, material, or coded wire tags may be in employee/owner time, but any costs will be negligible as it will take only a small amount of time to satisfy a request. Additionally, complying with such department requests will not result in loss of product. Small businesses engaged in commercial fish and wildlife activities may incur penalty-related costs if they fail to comply with department requests and are cited with a violation. A violation of the requirements is punishable as a gross misdemeanor under RCW 77.15.360, which carries the penalty of up to 364 days of jail time, up to a \$5,000 penalty, or both.

6. Steps taken by the agency to reduce the costs of the rule on small businesses, or reasonable justification for not doing so:

As costs are negligible, the requirements already apply to small businesses, and changes to the rule are technical in nature, there is no need for the agency to take steps to reduce costs to small businesses.

7. A description of how the agency will involve small businesses in the development of the rule:

The department determined that involving small businesses in developing the rule amendments was unnecessary because the proposed changes to WAC 220-56-112 simply combine existing requirements into one rule, are technical in nature, and do not add to pre-existing requirements.

WDFW sends out a notice of proposed rule-making projects after the proposed rule changes are filed to people who notified the department that they are interested in the department's rule-making activities. This notice directs those people to information on how they can participate in the rule-making process and comment on proposed changes.

8. A list of industries that will be required to comply with the rule:

Commercial fishers, commercial fish processors, and people engaged in commercial activity involving fish or wildlife must comply with requirements relating to department collection of sampling data and tags from fish and wildlife. The rule specifically exempts private sector cultured aquatic farms from the collection of sampling data and tag recovery requirements.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 220-28-010 Emergency regulations.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- | | |
|----------------|--|
| WAC 220-85-015 | License moratorium review boards. |
| WAC 220-85-030 | Moratorium advisory review boards—Secretary and investigative assistance, place of hearings. |
| WAC 220-85-040 | Moratorium advisory review boards—Director's action on license applications—Reasons stated in writing. |
| WAC 220-85-050 | Moratorium advisory review boards—Who may appeal. |
| WAC 220-85-060 | Moratorium advisory review boards—Proceedings to be informal—Rules of evidence inapplicable—Record to be kept. |
| WAC 220-85-070 | Moratorium advisory review boards—Appeals—Requirements—Form for appeal. |
| WAC 220-85-080 | Moratorium advisory review boards—Appeals—Time for scheduling hearings—Conduct of hearings. |
| WAC 220-85-090 | Moratorium advisory review boards—Decisions by advisory review board—Form and content. |
| WAC 220-85-100 | Moratorium advisory review boards—Decision on appeal by director. |
| WAC 220-85-110 | Moratorium advisory review boards—Appeals—Information procedures optional. |

AMENDATORY SECTION (Amending WSR 82-07-047, filed 3/18/82)

WAC 220-56-112 Sampling data and tag recovery. (1) It is unlawful for any person or entity to fail to comply with the directions of authorized department ~~((of fisheries))~~ personnel related to the collection of sampling data ~~((or material))~~ from ~~((salmon or other food))~~ fish and wildlife.

(2) It is ~~((also))~~ unlawful for any person or entity to fail to relinquish upon request to the department any fish tag or any part of a salmon, steelhead, or other ~~((food))~~ fish containing coded wire tags, including but not limited to ~~((τ))~~:

(a) The snouts of ~~((these))~~ salmon ~~((that are))~~ marked by having clipped adipose fins; and

(b) The snouts of steelhead marked by having clipped ventral fins.

(3) This section does not apply to private sector cultured aquatic farms.

(4) A violation of this section is a gross misdemeanor punishable under RCW 77.15.360, Unlawful interfering in department operations—Penalty.

AMENDATORY SECTION (Amending WSR 12-23-016, filed 11/9/12, effective 12/10/12)

WAC 220-56-315 Personal use crab, shrimp, crawfish—Unlawful acts.

(1) It is unlawful to take and possess crab, shrimp, and crawfish taken for personal use except by hand or with hand dip nets, ring nets, shellfish pots, or any hand-operated instrument that will not penetrate the shell. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.380 or 77.15.382 depending on the circumstances of the violation.

(2) It is unlawful to set, fish, or pull more than 2 units of gear at any one time ~~((except:))~~, unless otherwise provided in this subsection. A violation of this subsection is punishable under RCW 77.15.160, Infractions, or RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty, depending on the circumstances of the violation.

(a) In Puget Sound waters, it is unlawful to set, fish, or pull at any one time more than 2 units of crab gear and 2 additional units of shrimp gear.

(b) In Catch Record Card Areas 4 through 13, it is unlawful for the operator of any boat from which shrimp pots are set, fished, or pulled ~~((in Catch Record Card Areas 4 through 13))~~ to have on board or to fish more than 4 shrimp pots.

(c) In the Columbia River, it is unlawful to set, fish, or pull more than 3 units of crab gear ~~((in the Columbia River))~~.

(d) In fresh water, it is permissible to use up to 5 units of gear to fish for crawfish ~~((in fresh water))~~.

(3) It is unlawful for any person to operate a shellfish pot not attached to a buoy bearing that person's name, except that a second person may assist the pot owner in operation of the gear. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.382, Unlawful use of shellfish gear for personal use purposes—Penalty.

(4) It is unlawful to salvage or attempt to salvage shellfish pot gear from Hood Canal that has been lost ~~((without))~~, unless the person first ~~((obtaining))~~ obtains a permit~~((7))~~ issued by the director, authorizing that activity. A violation is punishable under RCW 77.15.180, Unlawful interference with fishing or hunting gear-Penalty. It is unlawful to fail to comply with all provisions of ~~((the))~~ a permit authorizing the salvage of gear from Hood Canal. A violation of this subsection is ~~((a misdemeanor, punishable under RCW 77.15.382 Unlawful use of shellfish gear for personal use purposes-Penalty))~~ RCW 77.15.750, Unlawful use of a department permit-Penalty.

(5) It is unlawful to dig for or possess ghost or mud shrimp taken for personal use by any method except hand operated suction devices or dug by hand. A violation of this subsection is ~~((a misdemeanor, punishable under RCW 77.15.382 Unlawful use of shellfish gear for personal use purposes-Penalty))~~ punishable under RCW 77.15.160, Infractions, or RCW 77.15.380, Unlawful recreational fishing in the second degree-Penalty, depending on the circumstances of the violation.

(6) It is unlawful to have more than one unit of unattended gear attached to a buoy line or to fail to have a separate buoy for each unit of gear. "One unit of gear" means one ring net or one shellfish pot. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.382, Unlawful use of shellfish gear for personal use purposes-Penalty.

(7) In waters open only on certain days or certain hours during the day, except for those waters affected by the night closure set out in subsection ~~((9))~~ (8) of this section, it is unlawful to fail to remove gear from the water ~~((when))~~ if fishing for shellfish is not allowed. It is also unlawful to fail to remove gear from the water ~~((by))~~ within one hour after sunset if fishing is not allowed on the next calendar day. In waters that are open continuously, except for those waters affected by the night closure set out in subsection ~~((9))~~ (8) of this section, gear may be left in the water during ~~((the))~~ a night closure. A violation of this subsection is ~~((a misdemeanor,))~~ punishable under RCW 77.15.160, Infractions, or RCW 77.15.380, Unlawful recreational fishing in the second degree-Penalty, depending on the circumstances of the violation.

(8) It is unlawful to set or pull shellfish pots, ring nets or star traps from a vessel in Catch Record Card Areas 1-13 from one hour after official sunset to one hour before official sunrise. A violation of this subsection is ~~((a misdemeanor,))~~ punishable under RCW 77.15.160, Infractions, or RCW 77.15.380, Unlawful recreational fishing in the second degree-Penalty, depending on the circumstances of the violation.

AMENDATORY SECTION (Amending WSR 07-20-006, filed 9/20/07, effective 10/21/07)

WAC 220-47-001 Puget Sound salmon—Quick reporting. All Puget Sound salmon fisheries are designated as "quick reporting required" fisheries, and commercial purchasers and receivers must comply with the provisions of WAC 220-69-240(~~(12)~~) (14).

AMENDATORY SECTION (Amending WSR 84-13-078, filed 6/21/84)

WAC 220-47-121 Treaty Indian gear identification. It (~~shall be~~) is unlawful for any person exercising his or her treaty Indian fishing rights at usual and accustomed grounds and stations within the Point No Point, Makah, Quinault, Medicine Creek, and Point Elliott treaty areas to leave any gear unattended unless there is affixed to it an identification tag of tribal affiliation and (~~specific fisherman~~) a valid treaty Indian identification number.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|----------------|--|
| WAC 232-12-082 | Collection of sampling data—Unlawful acts. |
| WAC 232-12-099 | Treaty Indian fishing gear identification. |