

**Item # 5 : WAC 220-20-010 structural improvements and updates –
Rule Briefing & Public Hearing**

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“GREEN SHEET”

Meeting: December 14-15, 2012, Commission Meeting

Agenda # 5 : WAC 220-20-010 structural improvements and updates - Rule Briefing

Staff Contact: Mike Cenci, Deputy Chief, Enforcement Program

Presenter(s): Joanna Eide, Administrative Regulations Analyst, Enforcement Program

Background: A WAC overhaul project is currently underway to update, reorganize, and streamline the department’s administrative code. The WAC overhaul project was presented to the Commission during the February 2012 meeting. Changes to rules for clarity, uniformity, adequacy, and accuracy, as well as the repeal of outdated and unnecessary rules are proposed as part of this project. This agenda item is to brief the Commission and hold a public hearing on the fourth batch of technical rule changes associated with the WAC Overhaul. The proposal amends WAC 220-20-010 to split this large, general rule apart. The proposal updates, clarifies, reorganizes, and restructures the content of WAC 220-20-010 into a more logical organization and by subject matter. Additionally, this project includes adjustments to rule language dealing with Northern Pike to align the WAC with previous WAC changes adopted by the Commission. The project also incorporates changes to derelict fishing gear provisions as referenced in WSR 11-16-076, filed on August 1, 2011. Other than the proposed changes in derelict fishing gear reporting, this rule proposal is purely technical in that it focuses on updates to language and splitting up a long, difficult to navigate rule.

Policy issues: The proposal includes technical amendments to clarify rules, and reorganize and restructure the rules in preparation to move the code into a new numbering and organizational structure in 2013. The policy changes involved are the proposed changes to derelict fishing gear reporting requirements. These provisions require commercial fishers to report lost or abandoned gear within 24 hours and provide specific information regarding the gear’s whereabouts, water depth where located, time and date of loss, etc. Failure to report as required in the new provisions is proposed as punishable as an infraction under RCW 77.15.160.

Public involvement process and outcome: A public hearing will be held in conjunction with the Commission briefing during the December Commission Meeting. WDFW also sent notifications of proposed rule changes to members of the public who expressed interest in being notified of proposed rule changes. Additionally, direct outreach with members of the commercial fishing industry was conducted to notify the commercial fishers of the proposed changes to reporting lost or abandoned commercial fishing gear.

Action requested: None.

Draft motion language: None.

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 reorganization of rules in this proposal will promote the clarity and efficiency of WDFW's administrative code.

Communications Plan: This rule proposal is listed on the agency's website on the Current Rule Making Activities page. WDFW sent notifications of proposed rule changes to members of the public who expressed interest in being notified of proposed rule changes. Because of the largely technical nature of the changes in this rule proposal, no extensive formal communications plan was needed. However, for the policy changes in the proposed derelict fishing gear reporting requirements, direct outreach with commercial fishers was conducted.



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

- Preproposal Statement of Inquiry was filed as WSR 12-17-025 ; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject) The subject of this proposed rule-making is updating, reorganizing, clarifying, and streamlining WAC 220-20-010, General provisions — Lawful and unlawful acts — Salmon, other fish and shellfish, as well as adding provisions for derelict fishing gear and making a technical change due to previous rule changes relating to Northern Pike.

Hearing location(s):
Natural Resources Building,
First Floor, Room 172
1111 Washington St. SE
Olympia, WA 98504

Date: December 14, 2012 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) December 7, 2012

Assistance for persons with disabilities: Contact:

Tami Lininger by November 30, 2012
TTY (800) 833-6388 or (360) 902-2267

Date of intended adoption: On or after January 11, 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 WAC 220-20-010, and adds provisions for derelict fishing gear reporting. The project also makes a technical change due to previous rulemakings relating to Northern Pike and splits a large, general rule into more manageable and logical sections. This proposed rulemaking is part of a larger effort to reorganize and update the agency's administrative code.

Reasons supporting proposal: WDFW needs the changes to WAC 220-20-010 to increase efficiency, functionality, and clarity of the rules within WDFW's Administrative Code. The changes promote increases in conservation and availability of resources, as well as provide penalties for failure to report lost fishing gear, which can jeopardize resources, habitat, and access to harvest. 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 77.12.045, and 77.12.047.

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

DATE
October 23, 2012

NAME (type or print)
Joanna Eide

SIGNATURE

TITLE
Administrative Regulations Analyst

CODE REVISER USE ONLY

**OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED**

**DATE: October 23, 2012
TIME: 3:42 PM**

WSR 12-21-115

(COMPLETE REVERSE SIDE)

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: Joanna Eide

Address:

600 Capitol Way N

Olympia, WA 98501

phone (360) 902-2403 _____

fax (360) 902-2155 _____

e-mail Joanna.Eide@dfw.wa.gov

No. Explain why no statement was prepared.

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 proposal contains requirements for small business commercial fishers to report the loss or abandonment of non-tribal commercial net fishing gear within the waters of the state within 24 hours. Specific information must be given to the department at the time of reporting, which appears in subsection (3) of the new section WAC 220-20-119, General gear rules—Commercial fishery. The lost or abandoned commercial net gear requirement is the only new requirement that may affect small businesses in this rule-making proposal. All other provisions are simply technical re-writes and reorganization of existing rules applying to recreational and commercial fishers.

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 proposed reporting requirements.

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

The costs of compliance with the new reporting provisions may be in employee/owner working time, but any costs will be negligible as reporting will take only a small amount of time.

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

No. Compliance with the new reporting requirements for lost or abandoned gear will not cause businesses to lose sales or revenue. However, noncompliance results in a rule violation and is punishable as an infraction under RCW 77.15.160, which carries a monetary penalty.

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 compliance with the new reporting provisions may be in employee/owner time, but any costs will be negligible as reporting will take only a small amount of time. Further, any costs associated with compliance with the proposed reporting requirements are not definite as commercial fishers will only incur costs for reporting if they lose or abandon commercial net gear or fail to report lost or abandoned gear.

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

The costs of compliance with the new reporting provisions are negligible and it is not possible to reduce potential costs any further.

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

WDFW discussed the proposed reporting requirements with current commercial license holders. Further, WDFW sent out a letter notifying commercial fishers of the proposed reporting requirements and provided notice of the scheduled public hearing date.

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

License holders wishing to participate in the commercial net fishery will be required to comply with the rule should the commercial fishers lose or abandon commercial fishing nets within the waters of the state of Washington.

AMENDATORY SECTION (Amending Order 10-33, filed 3/2/10, effective 4/2/10)

WAC 220-20-010 General (~~(provisions--Lawful and unlawful acts--Salmon, other fish and shellfish)~~ rules--Fish. (1) It (~~(shall be)~~) is unlawful to take, fish for, possess or transport (~~(for any purpose)~~) fish, shellfish, or fish or shellfish parts (~~(thereof)~~), in or from any (~~(of the)~~) waters or land (~~(over which)~~) within the jurisdiction of the state of Washington (~~(has jurisdiction)~~), or from the waters of the Pacific Ocean, except (~~(at the times, places and in the manners and for the species, quantities, sizes or sexes provided for in the regulations of the)~~) as provided by department rule.

~~((2) It shall be unlawful for any person to have in possession or under control or custody any food fish or shellfish within the land or water boundaries of the state of Washington, except in those areas which are open to commercial fishing or wherein the possession, control or custody of salmon or other food fish or shellfish for commercial purposes is made lawful under a statute of the state of Washington or the rules and regulations of the commission or director, unless otherwise provided.~~

~~(3) A person may fish for, possess, process and otherwise deal in food fish and fish offal or scrap for any purpose, provided that it shall be unlawful to use any of the following listed species for purposes other than human consumption or fishing bait:~~

Pacific halibut	<i>(Hippoglossus stenolepis)</i>
Pacific herring (except as prescribed in WAC 220-49-020)	<i>(Clupea harengus pallasii)</i>
Anchovy (except as provided for in WAC 220-33-060, 220-36- 03001, 220-44-020, and 220-40-030)	<i>(Engraulis mordax)</i>
Salmon	
Chinook	<i>(Oncorhynchus tshawytscha)</i>
Coho	<i>(Oncorhynchus kisutch)</i>
Chum	<i>(Oncorhynchus keta)</i>
Pink	<i>(Oncorhynchus gorbuscha)</i>
Sockeye	<i>(Oncorhynchus nerka)</i>
Masu	<i>(Oncorhynchus masu)</i>
Sardine	<i>(Sardinops sagax)</i>
Except as provided for in WAC 220-88C-040))	

(2) It is unlawful for any person who takes or possesses fish or shellfish taken from any of the waters or beaches of the

Columbia River, the state of Washington, or the Pacific Ocean, for any purpose, to fail to submit the fish or shellfish for inspection by authorized department personnel. Violation of this subsection is punishable under RCW 77.15.360, Unlawful interfering in department operations--Penalty.

(3) It is unlawful for the owner or operator of any fishing gear to refuse to submit to inspection of the gear in any manner specified by a fish and wildlife officer. Violation of this subsection is punishable under RCW 77.15.470.

(4) It ((shall be)) is unlawful for any person to fish for fish or shellfish while in possession in the field of fish or shellfish that are in violation of the ((harvest regulations)) rules for the area ((being)) fished. This ((regulation)) subsection does not apply to vessels in transit. Violation of his subsection is punishable under RCW 77.15.380 or RCW 77.15.550, depending on the circumstances of the violation.

(5) ((It shall be unlawful for the owner or operator of any commercial food fish or shellfish gear to leave such gear unattended in waters of the state or offshore waters unless said gear is marked.

(a) Shellfish pot, bottom fish pot, set line and set net gear must be marked with a buoy to which shall be affixed, in a visible and legible manner, the department approved and registered buoy brand issued to the license, provided that:

(i) Buoys affixed to unattended gear must be visible on the surface of the water except during strong tidal flow or extreme weather conditions.

(ii) When two or more shellfish pots are attached to a common ground line, the number of pots so attached must be clearly labeled on the required buoy.

(b) It is unlawful to operate any gillnet, attended or unattended, unless there is affixed, within five feet of each end of the net, a buoy, float, or some other form of marker, visible on the cork line of the net, on which shall be marked in a visible, legible and permanent manner the name and gillnet license number of the fisher.

(c) It shall be unlawful at any time to leave a gillnet unattended in the commercial salmon fishery.

(6) It shall be unlawful to place any commercial food fish or shellfish gear in any waters closed to commercial fishing, provided that this provision shall not apply to reef nets or brush weirs or to gear being tested under supervision of the department. In addition, it shall be unlawful to take, fish for or possess food fish with any type of commercial fishing gear in the waters of Carr Inlet north of north latitude 47°20', from August 15 through November 30, except as provided in chapter 220-47 WAC.

(7) It shall be unlawful for the owner or operator of any fishing gear to refuse to submit such gear to inspection in any manner specified by authorized representatives of the department.

(8) It shall be unlawful for any person taking or possessing fish or shellfish taken from any of the waters or beaches of the Columbia River, the state of Washington, or the Pacific Ocean, for any purpose, to fail to submit such fish or shellfish for

inspection by authorized representatives of the department.

~~(9) It shall be unlawful for any person licensed by the department to fail to make or return any report required by the department relative to the taking, selling, possessing, transporting, processing, freezing and storing of fish or shellfish, whether taken within the jurisdiction of the state of Washington or beyond, or on Indian reservations or usual and accustomed Indian fishing grounds.~~

~~(10)) It ((shall be)) is unlawful to take, fish for, possess, injure, kill, or molest fish in any fishway, fish ladder, fish screen, holding pond, rearing pond, or other fish protective device, or to interfere ((in any manner)) with the proper operation of ((such)) a fish protective device((s)) in any way. Violation of this subsection is punishable under RCW 77.15.370 or 77.15.380, depending on the circumstances of the violation.~~

~~((11) It shall be unlawful to club, gaff, snag, snare, dip net, harass, spear, stone, or otherwise molest, injure, kill, destroy, or shoot with a firearm, crossbow, bow and arrow, or compressed air gun, any fish or shellfish or parts thereof, or for any person to attempt to commit such acts, or to have any fish, shellfish or parts thereof so taken in possession, except as provided for in this subsection:~~

~~(a) A person may use a dip net or club in the landing of fish taken by personal-use angling, unless otherwise provided; and a person may use a gaff in the landing of tuna, halibut and dogfish, and a harpoon in the landing of halibut, in all catch record card areas.~~

~~(b)(i) A person may use a dip net, gaff, or club in the landing of food fish or shellfish taken for commercial purposes, except that it is unlawful to use a fish pew, pitchfork, or any other instrument that will penetrate the body of the fish or shellfish that are not going to be retained or are unlawful to possess.~~

~~(ii) It is unlawful under any circumstance to use a device that penetrates the body of a sturgeon whether legal to retain or not.~~

~~(c) A person may use a spear in underwater spear fishing, as provided for in WAC 220-56-160.~~

~~(d) A person may use a bow and arrow or spear to take carp, as provided for in WAC 220-56-280.~~

~~(e) A person may snag herring, smelt, anchovies, pilchard, sand lance, and squid when using forage fish jigger gear or squid jigs.~~

~~(f) A person may shoot halibut when landing them with a dip net, harpoon or gaff.~~

~~(12)) (6) It ((shall be)) is unlawful to take or possess((7 for any purpose,)) any fish or shellfish smaller or larger than the ((lawful)) minimum or maximum size limits or in excess of catch or possession limits prescribed by department rule. A person must immediately return to the water any ((such)) fish ((either)) or shellfish snagged, hooked, netted or gilled ((must be immediately returned to the water)) that do not conform to department size requirements or are in excess of catch or possession limits with~~

the least possible injury to the fish or shellfish. Violation of this subsection is a misdemeanor punishable under RCW 77.15.380 or 77.15.550, depending on the circumstances of the violation.

~~((13) It shall be unlawful to allow salmon or sturgeon or fish unlawful to retain that are entangled in commercial nets to pass through a power block or onto a power reel or drum.~~

~~(14) Notwithstanding the exceptions listed in subsection (15) of this section, it shall be unlawful to possess, aboard any vessel engaged in commercial fishing or having commercially caught fish aboard, any food fish or shellfish in such condition that its species, length, weight or sex cannot be determined if a species, species group or category, length, weight, or sex limit is prescribed for said species.~~

~~(15) It is unlawful to possess food fish or shellfish mutilated in any manner such that the natural length or weight cannot be determined if a length or weight limit is prescribed for said species, except as follows:~~

~~(a) The food fish or shellfish have been legally taken for commercial purposes, are landed, and are properly accounted for on a completed fish receiving ticket.~~

~~(b) A person may possess, transport through the waters of the state, or land dressed sablefish as defined in WAC 220-16-330.~~

~~(c) A person may possess, transport through the waters of the Pacific Ocean, or land dressed salmon caught during a legal commercial salmon troll fishery, provided that frozen Chinook salmon, dressed with the heads off, shall be 21 1/2 inches minimum; and frozen coho salmon, dressed with the heads off, shall be 12 inches minimum, measured from the midpoint of the clavicle arch to the fork of the tail.~~

~~(d) A person may possess, transport through the waters of the Pacific Ocean, or land dressed halibut if allowed by International Pacific Halibut Commission (IPHC) rules and such fish meet any IPHC size requirements. All halibut must be landed with the heads on.~~

~~(e) A person may possess, transport through the waters of the Pacific Ocean, or land dressed lingcod as defined by WAC 220-16-330 when taken during a lawful commercial fishery.~~

~~(16) It shall be unlawful to possess for any purpose any fish or shellfish in excess of catch or possession limits prescribed by department rule. Any such fish either snagged, hooked, netted or gilled must be immediately returned to the water with the least possible injury to the fish or shellfish.~~

~~(17) It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department.~~

~~(18) It shall be unlawful for any permit holder to fail to comply with all provisions of any special permit or letter of approval issued to him under the authority of the director, or to perform any act not specifically authorized in said document or in the regulations of the commission or director.~~

~~(19) It shall be unlawful to use, place or cause to be placed~~

~~in the waters or on the beaches or tidelands of the state any substance or chemical used for control of predators or pests affecting fish or shellfish or other aquatic marine organisms, without first having obtained a special permit to do so from the director.~~

~~(20) It shall be unlawful to test commercial fishing gear, except as follows:~~

~~(a) Bellingham Bay - Inside and northerly of a line from Governor's Point to the south tip of Eliza Island to Point Frances, in waters 10 fathoms and deeper.~~

~~(b) Boundary Bay - North of a line from Birch Point to Point Roberts, and south of the international boundary, in waters 10 fathoms and deeper during times not under control of the Pacific Salmon Commission.~~

~~(c) San Juan Channel - Within a 1-mile radius of Point Caution during times not under control of the Pacific Salmon Commission.~~

~~(d) Port Angeles - Inside and westerly of a line projected from the east tip of Ediz Hook through buoy C "1" to the mainland.~~

~~(e) Port Gardner - Within a 2-mile radius of the entrance to Everett breakwater, in waters 10 fathoms and deeper.~~

~~(f) Central Puget Sound - Between lines from Meadow Point to Point Monroe, and Skiff Point to West Point, in waters 50 fathoms and deeper.~~

~~(g) East Pass - Between lines from Point Robinson true east to the mainland, and from Dash Point to Point Piner, in waters 50 fathoms and deeper.~~

~~(h) Port Townsend - Westerly of a line from the Coast Guard station in Port Townsend to Walan Point to Kala Point, in waters 10 fathoms and deeper.~~

~~(i) All tows or sets are limited to 20 minutes, exclusive of setting and retrieving time.~~

~~(j) All testing is to be accomplished between 8:00 a.m. and 4:00 p.m.~~

~~(k) Cod ends of trawl nets must be left open, all hooks of set line gear must be unbaited, and no lures or baited hooks shall be used with jig or troll gear.~~

~~(l) Any and all incidentally caught fish and shellfish must be returned to the waters immediately, and no fish or shellfish are to be retained aboard the vessel at any time during a gear test operation.~~

~~(m) It shall be unlawful for any person conducting such gear testing operations to fail to notify the fish and wildlife enforcement office in Olympia prior to testing.~~

~~(21)) (7) It is unlawful for any person or ((corporation either)) entity licensed by the department or bringing fish or shellfish into the state to fail to comply with the directions of authorized department personnel related to the collection of sampling data or material from fish or shellfish. It is also unlawful for any ((such)) person or ((corporation)) entity to fail to relinquish to the department, upon request, any part of a salmon or other fish containing coded-wire tags((7)) including, but not limited to, the snouts of ((those)) salmon ((that are marked by having)) with clipped adipose fins.~~

~~((22) It is unlawful for any person to possess live bottom fish taken under a commercial fishery license.~~

~~(23) It is unlawful for any person to use chemical irritants to harvest fish, shellfish or unclassified marine invertebrates except as authorized by permit issued by the department.~~

~~(24) The lower Columbia River, Grays Harbor and Willapa Bay are closed to commercial sturgeon fishing, except as provided by emergency rule of the director. Sturgeon taken incidentally during an open commercial salmon fishing period may be retained for commercial purposes as described by department rule.))~~

NEW SECTION

WAC 220-20-116 Aquatic use of chemicals. (1) It is unlawful to use, place, or cause to be placed in state waters or on state beaches or tidelands any substance or chemical used for control of predators or pests that affects fish or shellfish or other aquatic marine organisms, without first obtaining a special permit to do so from the director.

(2) It is unlawful for any person to use chemical irritants to harvest fish, shellfish, or unclassified marine invertebrates, except as authorized by department permit.

(3) Violation of this section is a misdemeanor, punishable under RCW 77.15.150 or 77.15.196, depending on the circumstances of the violation.

NEW SECTION

WAC 220-20-117 Gaffing and use of other body-penetrating devices--Personal use. (1) It is unlawful to club, gaff, snag, snare, dip net, harass, spear, stone, or otherwise molest, mutilate, injure, kill, destroy, or shoot with a firearm, crossbow, bow and arrow, or compressed air gun, any fish or shellfish or fish or shellfish parts for personal-use purposes, except:

(a) A person may use a dip net or club in the landing of fish taken by personal-use angling, unless otherwise provided; and a person may use a gaff in the landing of tuna, halibut and dogfish, and a harpoon in the landing of halibut, in all catch record card areas.

(b) A person may use a spear in underwater spear fishing, as provided in WAC 220-56-160.

(c) A person may use a bow and arrow or spear to take carp or northern pike, as provided in WAC 220-56-280.

(d) A person may snag herring, smelt, anchovies, pilchard,

sand lance, and squid when using forage fish jigger gear or squid jigs.

(e) A person may shoot halibut when landing them with a dip net, harpoon or gaff for personal use only.

(2) It is unlawful to possess fish or shellfish or parts of fish or shellfish taken using the unlawful methods described in subsection (1) of this section.

(3) It is unlawful to use a device that penetrates the body of a sturgeon under any circumstance, whether the sturgeon is legal to retain or not.

(4) Violation of this section is a gross misdemeanor punishable under RCW 77.15.370, Unlawful recreational fishing in the first degree--Penalty.

(5) It is unlawful to attempt acts that violate this section. Violation of this subsection is punishable under RCW 77.15.380, Unlawful recreational fishing in the second degree--Penalty.

NEW SECTION

WAC 220-20-118 General rules--Commercial fishery. (1) It is unlawful for any person to possess any food fish or shellfish within the jurisdiction of the state of Washington, except in areas open to commercial fishing or where the possession of salmon or other food fish or shellfish for commercial purposes is permissible under state law or department rule.

(2) It is permissible to fish for, possess, process, and otherwise deal in food fish and fish offal or scrap for any purpose, except it is unlawful to use any of the following listed species for purposes other than human consumption or fishing bait:

Pacific halibut	<i>(Hippoglossus stenolepis)</i>
Pacific herring (except as prescribed in WAC 220-49-020)	<i>(Clupea harengus pallasii)</i>
Anchovy (except as provided for in WAC 220-33-060, 220-36- 03001, 220-44-020, and 220-40-030)	<i>(Engraulis mordax)</i>
Salmon	
Chinook	<i>(Oncorhynchus tshawytscha)</i>
Coho	<i>(Oncorhynchus kisutch)</i>
Chum	<i>(Oncorhynchus keta)</i>
Pink	<i>(Oncorhynchus gorbuscha)</i>
Sockeye	<i>(Oncorhynchus nerka)</i>
Masu	<i>(Oncorhynchus masu)</i>
Sardine	<i>(Sardinops sagax)</i>

(3) Violation of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time--Penalty.

NEW SECTION

WAC 220-20-119 General gear rules--Commercial fishery. (1) Commercial shellfish pot, bottom fish pot, set line and set net gear must be marked with a buoy that bears the department approved and registered buoy brand issued to the license in a visible and legible manner. It is unlawful for the owner or operator of any commercial food fish or shellfish gear to leave the gear unattended in state or offshore waters unless the gear is marked. Violation of this subsection is punishable under RCW 77.15.520 or 77.15.522, depending on the circumstances of the violation.

(2) Violations of the following are punishable under 77.15.520, Commercial fishing--Unlawful gear or methods--Penalty:

(a) Buoys affixed to unattended commercial food fish or shellfish gear must be visible on the surface of the water except during strong tidal flow or extreme weather conditions.

(b) It is unlawful to operate any gill net, attended or unattended, unless there is a buoy, float, or other marker affixed within 5 feet of each end of the net and visible on the cork line. The buoy, float, or other marker must be labeled legibly and permanently with the name and gill-net license number of the owner of the net.

(c) It is unlawful to leave a gill net unattended at any time in the commercial salmon fishery.

(d) It is unlawful to allow salmon, sturgeon, or fish unlawful to retain that are entangled in commercial nets to pass through a power block or onto a power reel or drum.

(3) It is unlawful for any person who loses or abandons non-tribal commercial net fishing gear within the waters of the state to fail to:

(a) Contact the department of fish and wildlife within twenty-four hours of the loss, by phone at 855-542-3935, or on-line at <http://wdfw.wa.gov/fishing/derelict/>; and

(b) Provide the following required information:

(i) Type of gear;

(ii) General location of the gear;

(iii) Latitude (if known) of the gear;

(iv) Longitude (if known) of the gear;

(v) Estimated water depth where the gear is located;

(vi) Date the gear was lost;

(vii) Time the gear was lost;

(viii) Name of gear's owner;

(ix) Telephone number of the gear's owner; and

(x) E-mail address (if available) of the gear's owner.

(c) Failing to report lost or abandoned nontribal commercial net gear under this subsection is an infraction under RCW

77.15.160.

NEW SECTION

WAC 220-20-120 General rules--Fish--Reporting. (1) It is unlawful for any person licensed by the department to fail to make or return any report required by the department relative to the taking, selling, possessing, transporting, processing, freezing, and storing of fish or shellfish, whether taken within the jurisdiction of the state of Washington or beyond, or on Indian reservations or usual and accustomed Indian fishing grounds.

(2) Violation of this section is punishable under RCW 77.15.280, 77.15.560, or 77.15.568, depending on the circumstances of the violation.

NEW SECTION

WAC 220-20-121 Possession of food fish and shellfish--Identification--Commercial. (1) It is unlawful to possess any food fish or shellfish in a condition where the species, length, weight, or sex cannot be determined if a species, species group or category, length, weight, or sex limit is prescribed for that species on a vessel engaging in commercial fishing or that has commercially caught fish aboard, except:

(a) It is permissible to possess fish or shellfish legally taken for commercial purposes, landed, and properly accounted for on a completed fish receiving ticket;

(b) It is permissible to possess, transport through the waters of the state, or land dressed sablefish;

(c) It is permissible to possess, transport through the waters of the Pacific Ocean, or land dressed salmon caught during a legal commercial salmon troll fishery, provided that frozen dressed Chinook salmon are 21 1/2 inches or more in length and frozen dressed coho salmon are 12 inches or more in length, measured from the midpoint of the clavicle arch to the fork of the tail;

(d) It is permissible to possess, transport through the waters of the Pacific Ocean, or land dressed halibut if allowed by International Pacific Halibut Commission (IPHC) rules and such fish meet any IPHC size requirements so long as halibut is landed with the heads still attached; and

(e) It is permissible to possess, transport through the waters of the Pacific Ocean, or land dressed lingcod when taken during a lawful commercial fishery.

(2) Violation of this section is a gross misdemeanor under RCW

77.15.550, Violation of commercial fishing area or time--Penalty.
(3) "Dressed fish" is defined as provided in WAC 220-16-330.

NEW SECTION

WAC 220-20-122 Possession of a net aboard a vessel--Commercial fishery. (1) It is unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum size or length permissible for a single net in that area, except as otherwise provided by department rule.
(2) Violation of this section is punishable under RCW 77.15.520, Commercial fishing--Unlawful gear or methods--Penalty.

NEW SECTION

WAC 220-20-123 Testing commercial fishing gear. (1) It is unlawful to test commercial fishing gear, except as follows:
(a) Bellingham Bay - Inside and northerly of a line from Governor's Point to the south tip of Eliza Island to Point Frances, in waters 10 fathoms and deeper.
(b) Boundary Bay - North of a line from Birch Point to Point Roberts, and south of the international boundary, in waters 10 fathoms and deeper during times not under control of the Pacific Salmon Commission.
(c) San Juan Channel - Within a 1-mile radius of Point Caution during times not under control of the Pacific Salmon Commission.
(d) Port Angeles - Inside and westerly of a line projected from the east tip of Ediz Hook through buoy C "1" to the mainland.
(e) Port Gardner - Within a 2-mile radius of the entrance to Everett breakwater, in waters 10 fathoms and deeper.
(f) Central Puget Sound - Between lines from Meadow Point to Point Monroe, and Skiff Point to West Point, in waters 50 fathoms and deeper.
(g) East Pass - Between lines from Point Robinson true east to the mainland, and from Dash Point to Point Piner, in waters 50 fathoms and deeper.
(h) Port Townsend - Westerly of a line from the Coast Guard station in Port Townsend to Walan Point to Kala Point, in waters 10 fathoms and deeper.
(i) All tows or sets are limited to 20 minutes, exclusive of setting and retrieving time.
(j) All testing must only occur between 8:00 a.m. and 4:00 p.m.

(k) Cod ends of trawl nets must be left open, all hooks of set line gear must be unbaited, and no lures or baited hooks may be used with jig or troll gear.

(1) All incidentally caught fish and shellfish must be returned to the waters immediately. It is unlawful to retain fish or shellfish aboard the vessel at any time during a gear test operation.

(2) It is unlawful for any person conducting gear testing operations to fail to notify fish and wildlife enforcement in Olympia at 360-902-2936 prior to testing.

(3) Violation of this section is punishable under RCW 77.15.520, 77.15.550, or 77.15.580, depending on the circumstances of the violation.

NEW SECTION

WAC 220-20-124 Placing commercial gear in closed waters--Unlawful. (1) It is unlawful to place any commercial food fish or shellfish gear in any waters closed to commercial fishing, except reef nets, brush weirs, or gear tested in accordance with WAC 220-20-123 and under supervision of the department.

(2) It is unlawful to take, fish for, or possess food fish with any type of commercial fishing gear in the waters of Carr Inlet north of north latitude 47°20', from August 15 through November 30, except as provided in chapter 220-47 WAC.

(3) Violation of this section is punishable under RCW 77.15.520 or 77.15.550.

NEW SECTION

WAC 220-20-125 Commercial sturgeon fishery--Gillnet--Lower Columbia, Grays Harbor and Willapa Bay. (1) The lower Columbia River, Grays Harbor and Willapa Bay are closed to commercial sturgeon fishing, except as provided by emergency rule of the director. Sturgeon taken incidentally during an open commercial salmon fishing period may be retained for commercial purposes when allowed by department rule.

(2) Violation of this subsection is a gross misdemeanor under RCW 77.15.550, Violation of commercial fishing area or time--Penalty, unless the circumstances constitute violating commercial fishing area or time in the first degree, which is a class C felony.

NEW SECTION

WAC 220-20-126 Gaffing and use of other body-penetrating devices--Commercial. (1) It is unlawful to club, gaff, snag, snare, dip net, harass, spear, stone, or otherwise molest, injure, kill, destroy, or shoot with a firearm, crossbow, bow and arrow, or compressed air gun, any fish or shellfish or parts of fish or shellfish for commercial purposes, except: It is permissible to use a dip net, gaff, or club in the landing of food fish or shellfish. However, it is unlawful to use a fish pew, pitchfork, or any other instrument that penetrates the body of the fish or shellfish if the fish or shellfish will not be retained or are unlawful to possess.

(2) It is unlawful to possess fish or shellfish or parts of fish or shellfish taken using the unlawful methods described in subsection (1) of this section.

(3) It is unlawful under any circumstance to use a device that penetrates the body of a sturgeon whether the sturgeon is legal to retain or not.

(4) Violation of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing--Unlawful gear or methods--Penalty.

(5) It is unlawful to attempt acts that violate this section. Violation of this subsection is punishable under RCW 77.15.382, Unlawful recreational fishing in the second degree--Penalty.