

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
BOARD OF NATURAL RESOURCES

RESOLUTION NO. _____

A **RESOLUTION** related to a Department of Natural Resources Proposal to adopt WAC 332-30-172 establishing a geoduck diver safety program and minimum safety requirements consistent with the directive of RCW 43.30.560.

BE IT RESOLVED BY THE BOARD OF NATURAL RESOURCES, DEPARTMENT OF NATURAL RESOURCES THAT:

SECTION 1. The Department of Natural Resources co-manages the wildstock geoduck fishery within Washington State with the Department of Fish and Wildlife and Puget Sound Treaty Indian Tribes. The 2013 Washington State Legislature passed Second Substitute House Bill 1764 directing the Department of Natural Resources to adopt rules creating a geoduck diver safety program and safety requirements for all state wildstock geoduck divers licensed under RCW 77.65.410. The rules must be based on the recommendation of the geoduck harvest safety committee established in RCW 43.30.555 and may not conflict with commercial diving standards promulgated by the federal Occupational Safety and Health Administration. All licensed geoduck divers must annually complete the geoduck diver safety program, beginning January 1, 2015 in order to be maintained on a Department of Natural Resources' geoduck harvest plan of operation or issued a Department of Fish and Wildlife geoduck diver license.

SECTION 2. The Department of Natural Resources convened the geoduck harvest safety committee on September 23, 2013. Consistent with RCW 43.30.555, the committee is comprised of one representative from the Department of Natural Resources Dive Program, the Department's external dive safety review panel, the Harvest Divers Association, and the Washington Harvesters Association. Ex-officio membership included representatives from the Department of Fish and Wildlife and Department of Labor and Industries. The committee reviewed federal and state standards for commercial diving, as well representative programs from other fisheries. The committee submitted a formal recommendation regarding establishment of a geoduck diver safety program and minimum safety requirements for divers licensed under RCW 77.65.410 on November 27, 2013. The committee unanimously supported four training requirements, including CPR/first aid certification, emergency oxygen certification, Washington State Boater Education Card, and an annual safety refresher course. The committee was split on the recommendation for an annual dive physical to demonstrate medical fitness to be exposed to hyperbaric conditions.

SECTION 3. The Department of Natural Resources filed a Proposed Rulemaking (CR-102) with the Office of the Code Reviser on April 22, 2014 that was published in the Washington State

Register Issue 14-09-107. The proposed rule defined a geoduck diver safety program that contained a combination of safety training and medical requirements based on the November 2013 Geoduck Safety Committee recommendations. The Department distributed mailings to all licensed geoduck divers and active purchasers to inform them of the proposed rule, supporting documentation, public hearings and applicable comment periods.

SECTION 4. The Department of Natural Resources provided opportunities for public participation consistent the Washington State Administrative Procedures Act (RCW 34.05) and held three public meetings in May and June of 2014, and March of 2015. The Department received and considered over 200 written comments and testimonies during the public hearings and applicable comments periods. The overwhelming majority of comments were from the Harvester Divers Association, Washington Harvester Association, and geoduck purchasers. Divers and harvesters unanimously opposed the requirement for a hyperbaric physical, but supported the proposed training requirements. Purchasers requested more stringent safety requirements, including a hyperbaric physical, drug testing, and commercial diver certification.

SECTION 5. After consideration of public comment, the Department filed a Revised Supplemental Notice of Proposed Rulemaking with the Code Reviser on February 4, 2015 that was published in the Washington State Register Issue 15-04-138. The amended proposal to establish a geoduck safety program outlined minimum training requirements, including CPR/first aid certification, emergency oxygen certification, Washington State Boater Education Card, and an annual self-attestation confirming divers' maintain competency in fundamental principles of dive safety consistent with Federal Occupational Health and Safety Administration standards. The Department removed the previously proposed medical requirement for a physician examination of a diver's fitness to be exposed to hyperbaric conditions in response to unanimous opposition from the Harvest Divers Association and Washington Harvesters Association. The Department distributed mailings to all licensed geoduck divers and active purchasers to inform them of the revised rule language, the availability of a updated cost-benefit analysis and small business economic impact statement, and additional opportunities to provide public comment.

SECTION 6. The Department filed a Continuance of Washington State Register 15-04-138 on July 1, 2015 that was published in the Washington State Register Issue 15-14-133. The Continuance was filed to allow the Board of Natural Resources to consider the proposed rule at the August 18, 2015 hearing. The previously proposed rule was scheduled to expire on August 17, 2015. Although no substantive changes were made, an additional opportunity for public comment was provided.

SECTION 7. The proposed rule establishing a geoduck diver safety program is an important step to establishing minimum safety requirements for geoduck harvest divers within the state managed fishery. The proposed geoduck diver safety program represents a collaborative effort between geoduck harvest industry representatives and the Department of Natural Resources to promote safe practices within the fishery. Annual verification of minimum training requirements will help mitigate the inherent risk associated with geoduck harvest diving. The Department of Natural Resources intends to continue utilize the geoduck harvest safety committee as resource

to review and address safety concerns associated with geoduck harvest, including operational issues which cannot be effectively addressed at the point of licensing.

NOW THEREFORE, based on the foregoing, the Board adopted the following resolution:

1. The proposal to adopt WAC 332-30-172 is **APPROVED**.
2. The Aquatic Resources Division staff shall file WAC 332-30-172 as approved and the CR-103 with the Code Reviser; the rule shall be effective upon the expiration of thirty days after the date of filing.
3. The Aquatic Resources Division staff shall continue to work with geoduck harvest industry representatives to advance safe practices, including operational considerations that cannot be addressed at the point of licensing.

APPROVED AND ADOPTED by the Board of Natural Resources, Department of Natural Resources, State of Washington, this _____ day of _____, 20____.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Commissioner of Public Lands.

PETER GOLDMARK
Commissioner of Public Lands

Approved as to form,



5 Assistant Attorney General

