

2SHB 1764 - S COMM AMD

By Committee on Natural Resources & Parks

ADOPTED 04/16/2013

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 77.65.410 and 1993 c 340 s 24 are each amended to
4 read as follows:

5 (1)(a) Every diver engaged in the commercial harvest of subtidal
6 geoduck clams shall obtain a ((nontransferable)) geoduck diver license.
7 An individual may only own one license and all geoduck harvesting
8 performed under the license must be done personally by the actual
9 license holder.

10 (b) The licensing requirement created in this section does not
11 apply to divers engaged in activities related to the cultivation of
12 geoduck clams as private sector cultured aquatic products as defined in
13 RCW 15.85.020.

14 (c) The geoduck diver license is a nontransferable license.

15 (2) Beginning January 1, 2015, the director may not issue more than
16 seventy-seven geoduck diver licenses in any one year.

17 (3) The annual geoduck diver license fee is as provided in RCW
18 77.65.440.

19 (4) A geoduck diver license expires on December 31st of each year.
20 Prior to the license's expiration, a license holder may apply to renew
21 the license holder's geoduck diver license only if the license holder
22 is included on a department of natural resources' geoduck harvest
23 agreement plan of operation during the applicable current calendar
24 year.

25 (5) Beginning January 1, 2015, each person applying for or renewing
26 a geoduck diver license under this section must complete the geoduck
27 diver safety program established in section 5 of this act prior to
28 being issued a license.

1 NEW SECTION. **Sec. 2.** (1) The director of the department of fish
2 and wildlife shall give individuals who held a geoduck diver license in
3 2011, 2012, 2013, or 2014, and who were listed on a department of
4 natural resources' geoduck harvest agreement plan of operation during
5 the same period, the right of first refusal to purchase a geoduck diver
6 license for the 2015 license year.

7 (2) Any license holder who qualifies for the right of first refusal
8 under this section must have his or her intent to purchase a geoduck
9 diver license in 2015 known to the director of the department of fish
10 and wildlife within six months of the effective date of this section.

11 (3) This section expires June 30, 2016.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.65 RCW
13 to read as follows:

14 The department must revoke a geoduck diver license issued under RCW
15 77.65.410, and the licensee must surrender the license, if the licensee
16 is found in violation of a department of natural resources' geoduck
17 harvest agreement two or more times. The person surrendering the
18 geoduck diver license may not hold another geoduck diver license for a
19 period of one calendar year from the date the license is surrendered.

20 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.30 RCW
21 to read as follows:

22 (1) The department shall establish a geoduck harvest safety
23 committee. The geoduck harvest safety committee consists of one
24 representative from the department, one representative from the
25 department's geoduck diver advisory committee, one representative from
26 an organization representing the interests of geoduck harvesters, and
27 one representative from an organization representing the interests of
28 geoduck divers. Each representative must be appointed by the
29 administrator.

30 (2) The geoduck harvest safety committee must meet at least
31 quarterly. By December 1, 2013, the committee must submit a
32 recommendation to the department regarding the establishment of a
33 geoduck diver safety program and safety requirements for geoduck divers
34 licensed under RCW 77.65.410.

35 (3) Upon the establishment of the geoduck diver safety program
36 under section 5 of this act, the geoduck harvest safety committee must

1 continue to review and evaluate the safety program's success and
2 effectiveness and recommend to the department appropriate changes to
3 improve the geoduck diver safety program.

4 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.30 RCW
5 to read as follows:

6 (1) By December 1, 2014, the department must, by rule, create a
7 geoduck diver safety program and establish safety requirements for
8 geoduck divers licensed under RCW 77.65.410. The department must adopt
9 rules based on the recommendation of the geoduck harvest safety
10 committee established in section 4 of this act.

11 (2) The department may adopt, amend, or repeal rules as needed to
12 ensure the success and effectiveness of the geoduck diver safety
13 program created under subsection (1) of this section. The department
14 must consider the recommendations provided by the geoduck harvest
15 safety committee under section 4(3) of this act.

16 (3) The department may not adopt rules in conflict with commercial
17 diving safety standards and regulations promulgated and implemented by
18 the federal occupational safety and health administration established
19 under the federal occupational safety and health act of 1970 (84 Stat.
20 1590 et seq.; 29 U.S.C. Sec. 651 et seq.).

21 (4) A civil suit or action may not be commenced or prosecuted
22 against the administrator, department, or any other government officer
23 or entity by reason of any actions taken in connection with the
24 adoption or enforcement of the geoduck diver safety program and safety
25 requirements established under subsections (1) and (2) of this section.
26 The state of Washington does not waive its sovereign immunity with
27 respect to any actions taken by the department under this section.

28 **Sec. 6.** RCW 79.135.210 and 2005 c 155 s 708 and 2005 c 113 s 3 are
29 each reenacted and amended to read as follows:

30 (1) Except as provided in RCW 79.135.040, geoducks shall be sold as
31 valuable materials under the provisions of chapter 79.90 RCW. After
32 confirmation of the sale, the department may enter into an agreement
33 with the purchaser for the harvesting of geoducks. The department may
34 place terms and conditions in the harvesting agreements as the
35 department deems necessary. The department may enforce the provisions
36 of any harvesting agreement by suspending or canceling the harvesting

1 agreement or through any other means contained in the harvesting
2 agreement. Any geoduck harvester may terminate a harvesting agreement
3 entered into pursuant to this subsection if actions of a governmental
4 agency, beyond the control of the harvester, its agents, or its
5 employees, prohibit harvesting, for a period exceeding thirty days
6 during the term of the harvesting agreement, except as provided within
7 the agreement. Upon termination of the agreement by the harvester, the
8 harvester shall be reimbursed by the department for the cost paid to
9 the department on the agreement, less the value of the harvest already
10 accomplished by the harvester under the agreement.

11 (2) Harvesting agreements under this title for the purpose of
12 harvesting geoducks shall require the harvester and the harvester's
13 agent or representatives to comply with all applicable commercial
14 diving safety standards and regulations promulgated and implemented by
15 the federal occupational safety and health administration established
16 under the federal occupational safety and health act of 1970 as the law
17 exists or as amended (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et
18 seq.). However, for the purposes of this section and RCW 77.60.070,
19 all persons who dive for geoducks are deemed to be employees as defined
20 by the federal occupational safety and health act. All harvesting
21 agreements shall provide that failure to comply with these standards is
22 cause for suspension or cancellation of the harvesting agreement.
23 Further, for the purposes of this subsection if the harvester contracts
24 with another person or entity for the harvesting of geoducks, the
25 harvesting agreement shall not be suspended or canceled if the
26 harvester terminates its business relationship with such an entity
27 until compliance with this subsection is secured.

28 (3) Beginning January 1, 2015, geoduck divers licensed under RCW
29 77.65.410 must annually complete the geoduck diver safety program
30 established in section 5 of this act in order to be maintained on a
31 department of natural resources' harvest agreement plan of operation.

32 NEW SECTION. **Sec. 7.** The department of fish and wildlife may
33 adopt any rules deemed necessary to implement sections 1 through 3 of
34 this act."

ADOPTED 04/16/2013

1 On page 1, line 1 of the title, after "licenses;" strike the
2 remainder of the title and insert "amending RCW 77.65.410; reenacting
3 and amending RCW 79.135.210; adding a new section to chapter 77.65 RCW;
4 adding new sections to chapter 43.30 RCW; creating new sections; and
5 providing an expiration date."

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