

**Amending Coastal Dungeness Crab Rules –  
(Decision)**

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## Summary

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<b>Meeting dates:</b>	August 18, 2017 – Olympia – conference call
<b>Agenda item:</b>	Amending Coastal Dungeness Crab Rules - Adoption
<b>Presenter(s):</b>	Heather Reed, Intergovernmental Ocean Policy

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### Background summary:

Changes to coastal commercial Dungeness crab regulations are needed to revise the structure of the replacement buoy tag program and provide a mechanism for commercial Dungeness crab fishermen to lawfully transport commercial crab gear through Washington waters that have buoy tags issued by another state.

- **Modify replacement buoy tag periods and limits.** Buoy tags are used to enforce pot limit regulations. When pots or buoys with their associated tags are lost, this program allows commercial fishermen to continue to fish with their specified pot limit. Replacement buoy tags are available to each coastal Dungeness crab license holder on an as needed basis. The proposed changes would reduce the number of replacement buoy tags that are available to licensed crab fishermen and shorten the period when replacement tags are available. A historical review of replacement issuance shows that only a few anglers request replacement tags during each commercial season. For example, on average since the implementation of the program in 2005, twenty-three percent of license holders have requested replacement tags. During the 2015-2016 season, thirteen percent of license holders requested replacement tags. WDFW Enforcement officers have cited commercial fishers who have illegally used replacement tags to supplement their full pot limit. This illegal use of the replacement tag program makes it difficult to insure that pot limits are not exceeded. Reducing the time period when replacement tags are available during the season and the number that are available to each license holder will improve enforceability of the pot limit. In addition, reducing the number of replacement tags available will help ensure fishers are proactively searching for and retrieving lost pots, reducing the possibility of marine mammal entanglements in Dungeness crab gear.
- **Allow transport of out of state crab gear.** Under current regulations, it is unlawful to transport through Washington waters crab pots that do not have buoy tags issued by the department. This rule is in place to assure that commercial crab gear from another state is not unlawfully deployed and fished in Washington waters. This is especially true during the early portion of the season when a fisher could significantly increase his catch by illegally deploying, then quickly retrieving his out-of-state gear and not easily be detected. However, the coastal Dungeness crab fishery is a coastwide fishery with a significant number of Washington licensed fishermen also participating in the commercial Dungeness crab fisheries primarily off Oregon, but also off California and Alaska. In most cases, fishermen can transport Oregon gear via trucks to Oregon prior to the opening of the season. Yet, under certain situations it may be prohibitive to transport or find sufficient dockside storage in Oregon particularly in years when the season has been delayed in both Washington and Oregon for a significant period of time. Fishermen are responding to this problem by keeping out of state gear on their vessel prior to the season opening and transporting that gear to Oregon just prior to the season opening. To address these situations, we are revising the regulations to allow gear transport through Washington waters when the vessel operator has received a gear transport permit issued by WDFW. The permit will allow transport during a short time period (3-days) and require specific information including the location where the non-Washington gear has been deployed. These changes will address difficulties with gear transport for fishermen that participate in the commercial crab fishery across state boundaries and will improve enforceability of crab pot limits.

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### Policy issue(s) you are bringing to the Commission for consideration:

These proposed rule changes are necessary to streamline the replacement buoy tag program and allow Washington based coastal commercial Dungeness crab fishermen to lawfully transport gear from other states through Washington waters.

Both regulatory changes will also improve the enforceability of the coastal Dungeness crab pot limit.

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**Public involvement process used and what you learned:**

WDFW has an active coastal Dungeness crab Advisory Board appointed by the Director. These changes were developed with input from the Advisory Board and a larger group of industry members.

WDFW began discussing changes to the replacement buoy tag program several years ago. In 2014, the Commission took action to reduce the overall number of replacement tags from fifteen to ten percent of the total number of buoy tags issued according to each license owner's pot limit (300 or 500). This was considered a first step to addressing issues with the enforceability of coastal pot limits and industry was committed to continuing the discussion relative to additional changes, including eliminating the replacement tag program all together. WDFW met with industry members at two meetings during the Spring of 2017 (March 24 and April 27, 2017) to follow-up on changes to the replacement buoy tag program in addition to discussing other issues affecting the coastal crab industry. It was clear that most industry members were not in favor of complete elimination of the replacement buoy tag program. In addition, some industry members were in favor of not making any changes to the replacement tag program while others could see the benefit of further reducing the amount of replacement tags available to each license holder while also making changes to the time period when replacement tags are available during the season.

Another issue discussed at the spring 2017 industry meetings is the practice of transiting crab gear used in Dungeness crab fisheries in other areas such as Oregon or Alaska through Washington waters. Many industry members were unaware that transiting gear through Washington waters with gear that does not have buoy tags issues by WDFW is prohibited under current state regulations. WDFW enforcement staff was present at the industry meeting and could understand the dilemma faced by Washington resident crab fishermen that also fish in Oregon. In response, transport of out of state gear will be allowed as needed when fishermen receive a permit issued by WDFW. The permit will allow WDFW enforcement to effectively track out of state gear as it is transported through Washington waters and will require permit holders to record the location of the gear that is set.

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**Action requested:**

Adopt the changes to coastal Dungeness crab regulations as proposed by Department staff.

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**Draft motion language:**

I move that the Fish and Wildlife Commission adopt the proposed changes to WAC 220-340-430 and WAC 220-340-440 as proposed by Department staff.

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**Justification for Commission action:**

The proposed revisions to coastal Dungeness crab regulations will streamline the replacement buoy tag program and address a stakeholder request to allow the lawful transport of out of state crab gear through Washington waters. In addition, these changes will improve the enforceability of the coastal Dungeness crab pot limit.

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**Communications Plan:**

No public comment was received on the proposed rule changes.

In addition to discussing these proposals at two public meetings during the spring of 2017, all coastal Dungeness crab license holders received a letter by either email or U.S. mail describing the proposed rule changes. Public comment was open through August 6th and a public hearing was held at the August 5, 2017 Commission meeting. WDFW staff will notify all coastal Dungeness crab license holders on Commission action taken.



# 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 type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 17-10-071 ; or  | <input 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)  
 WAC 220-340-430 Commercial crab fishery – Buoy tag, pot tag, and buoy requirements  
 WAC 220-340-440 Commercial crab gear – Possession of another's gear and tag tampering

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

Date: August 4-5, 2017 Time: 8:00 a.m.

**Submit written comments to:**  
 Scott Bird  
 WDFW Rules Coordinator  
 Address: 600 Capitol Way N.  
 Olympia WA 98501-1091

e-mail [Rules.Coordinator@dfw.wa.gov](mailto:Rules.Coordinator@dfw.wa.gov)  
 fax (360)902-2403 by (date) August 5, 2017

**Assistance for persons with disabilities:** Contact  
Tami Lininger by August 3, 2017  
 TTY (360) 902-2207 or (360) 902-2267

**Date of intended adoption:** On or after August 6, 2017  
 (Note: This is NOT the effective date)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**  
 The purpose of the rule changes is to streamline and clarify rules concerning the transport of coastal Dungeness crab gear from another state in order to improve efficiency for stakeholders and regulatory enforcement. In addition, the rule changes are needed to provide a broader application of the electronic fish ticket program.

**Reasons supporting proposal:**  
 See Attachment

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

**Statute being implemented:** RCW 77.04.012, 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:

**DATE**  
 June 16, 2017

**NAME** (type or print)  
 Scott Bird

**SIGNATURE**

**TITLE**  
 Rules Coordinator

### CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
 STATE OF WASHINGTON  
 FILED

**DATE: June 16, 2017**  
**TIME: 1:29 PM**

**WSR 17-13-074**

(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)

- Private
- Public
- Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting..... Heather Reed	1111 Washington St. SE, Olympia, WA	(360) 902-2487
Implementation.... Heather Reed	1111 Washington St. SE, Olympia, WA	(360) 902-2487
Enforcement..... Chief Chris Anderson	1111 Washington St. SE, Olympia, WA	(360) 902-2403

**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. There is no impact on small business.

**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 rule proposal does not affect hydraulics.

# Attachment

## **Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

Changes to coastal commercial Dungeness crab regulations are needed to revise the structure of the replacement buoy tag program and provide a mechanism for commercial Dungeness crab fishermen to lawfully transport commercial crab pots through Washington waters that have buoy tags issued by another state.

### **WAC 340-430**

Buoy tags are used to enforce pot limit regulations. These changes would reduce the number of replacement buoy tags that are available to licensed crab fishermen and shorten the period when replacement tags are available. Replacement buoy tags are available to each coastal Dungeness crab license holder on an as needed basis to replace tags that may have been lost during the season. A historical review of replacement issuance shows that very few anglers use replacement tags during the commercial season however, when pots or buoys with their associated tags are lost, this program allows commercial fishermen to continue to fish with their specified amount of gear. The replacement tag program can be a means for exceeding the pot limit if a vessel operator uses replacement tags in addition to their full buoy tag allotment rather than as a replacement tool, creating issues with the ability of enforcement staff to insure that pot limits are not exceeded. Reducing the time period when replacement tags are available during the season and the number that are available to each license holder will not only streamline the program but also improve enforceability of the pot limit.

### **WAC 340-440**

Under current regulations, it is unlawful to have crab pots without buoy tags issued by the department. This rule is in place to assure that commercial crab gear from another state is not deployed and fished in Washington waters. However, the coastal Dungeness crab fishery is a coastwide fishery with a significant number of Washington licensed fishermen also participating in the commercial Dungeness crab fishery off Oregon, California and even Alaska. The issue is primarily for vessels that fish in both Washington and Oregon. In most cases, fishermen can transport Oregon gear via trucks to Oregon prior to the opening of the season. Yet, under certain situations it may be prohibitive to transport or find sufficient dockside storage in Oregon particularly in years when the season has been delayed in both Washington and Oregon for a significant period of time. To address these situations, we are revising the regulations to allow gear transport through Washington waters when the vessel operator has received a gear transport permit issued by WDFW. The permit will allow transport during a short time period (3-days) and require specific information including the location where the non-Washington gear has been deployed. These changes will address difficulties with gear transport for fishermen that participate in the commercial crab fishery across state boundaries and will improve enforceability of crab pot limits.

## **Reasons supporting proposal:**

Changes are needed to streamline the coastal Dungeness crab replacement buoy tag program and allow the transport of commercial crab gear through Washington waters on a limit basis. Both measures improve enforceability of the Washington crab pot limit program.

**WAC 220-340-430 Commercial crab fishery—Buoy tag, pot tag, and buoy requirements. (1) Buoy tag and pot tag required.**

(a) It is unlawful to place in the water, pull from the water, possess on the water, or transport on the water any crab buoy or crab pot without an attached buoy tag and pot tag that meet the requirements of this section, except as provided by (b) and (c) of this subsection. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(b) Persons operating under a valid coastal gear recovery permit as provided in WAC (~~220-340-450~~) 220-340-440 may possess crab pots or buoys missing tags or bearing the tags of another license holder, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

(c) Persons operating under a valid coastal gear transport permit as provided in WAC 220-340-440 may possess crab pots or buoys bearing the tags issued by another state, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

(2) **Commercial crab fishery pot tag requirements:** Each shellfish pot used in the commercial crab fishery must have a durable, nonbiodegradable tag securely attached to the pot that is permanently and legibly marked with the license owner's name or license number and telephone number. If the tag information is illegible, or the tag is lost for any reason, the pot is not in compliance with state law. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(3) **Commercial crab fishery buoy tag requirements.**

(a) The department issues crab pot buoy tags to the owner of each commercial crab fishery license upon payment of an annual buoy tag fee per crab pot buoy tag. Prior to setting gear, each Puget Sound crab license holder must purchase 100 tags, and each coastal crab fisher must purchase 300 or 500 tags, depending on the crab pot limit assigned to the license.

(b) In coastal waters each crab pot must have the department-issued buoy tag securely attached to the first buoy on the crab pot buoy line (the buoy closest to the crab pot), and the buoy tag must be attached to the end of the first buoy, at the end away from the crab pot buoy line.

(c) In Puget Sound, all crab buoys must have the department-issued buoy tag attached to the outermost end of the buoy line.

(d) If there is more than one buoy attached to a pot, only one buoy tag is required.

(e) Replacement crab buoy tags.

(i) Puget Sound: The department only issues additional tags to replace lost tags to owners of Puget Sound commercial crab fishery licenses who obtain, complete, and sign a declaration, under penalty of perjury, in the presence of an authorized department employee. The declaration must state the number of buoy tags lost, the location and date where the licensee last observed lost gear or tags, and the presumed cause of the loss.



(ii) Coastal: The department only issues replacement buoy tags for the coastal crab fishery (~~(15 days after the season is opened)~~) beginning March 1 and after a signed affidavit is received by an authorized department employee. The affidavit must be signed by the primary or alternate operator fishing the commercial crab gear and state the number of buoy tags lost, the location and date where the licensee last observed lost gear or tags, and the presumed cause of the loss.

(A) Coastal crab license holders with a 300-pot limit may replace lost tags according to the following schedule:

(I) Period 1, up to (~~(15)~~) 10 tags.

(II) Period 2, (~~(10)~~) 5 additional tags with no more than (~~(25)~~) 15 tags total issued through the end of Period 2.

~~((III) Period 3, 5 additional tags with no more than 30 tags total issued through the end of the season.))~~

(B) Coastal crab license holders with a 500-pot limit may replace lost tags according to the following schedule:

(I) Period 1, up to (~~(25)~~) 15 tags.

(II) Period 2, (~~(15)~~) 10 additional tags with no more than (~~(40)~~) 25 tags total issued through the end of Period 2.

~~((III) Period 3, 10 additional tags with no more than 50 tags total issued through the end of the season.))~~

(C) Replacement tag periods are defined as follows:

(I) Period 1: (~~The first business day after 15 days following the season opening through the next 30 days.~~) March 1 through April 30.

(II) Period 2: (~~The first business day after the end of Period 1 through the next 30 days.~~)

~~(III) Period 3: The first business day after the end of Period 2 through the end of the season.)~~ May 1 through June 30. No replacement tags will be issued for the current season after July 1.

(D) In the case of extraordinary loss of crab pot gear, the department may issue replacement tags in excess of the amount listed in this subsection on a case-by-case basis.

(4) A violation of subsection (3) of this section is a gross misdemeanor, punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(5) **Commercial crab fishery buoy requirements.**

(a) All buoys attached to commercial crab gear must consist of a durable material and remain floating on the water's surface when 5 pounds of weight is attached.

(b) No buoys attached to commercial crab gear in Puget Sound may be both red and white in color unless a minimum of 30 percent of the surface of each buoy is also prominently marked with an additional color or colors other than red or white. Red and white colors are reserved for personal use crab gear as described in WAC 220-330-020.

(c) It is unlawful for any coastal Dungeness crab fishery license holder to fish for crab unless the license holder has registered the buoy brand and buoy color(s) to be used with the license. A license holder may register only one unique buoy brand and one buoy color scheme with the department per license. Persons holding more than one state license must register buoy color(s) for each license that are distinctly different. The buoy color(s) will be shown in a color photograph.

(i) All buoys fished under a single license must be marked in a uniform manner with one buoy brand number registered by the license

holder with the department and be of identical color or color combinations.

(ii) It is unlawful for a coastal Dungeness crab fishery license holder to fish for crab using any other buoy brand or color(s) than those registered with and assigned to the license by the department.

(6) Violation of subsection (5) of this section is a gross misdemeanor, punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-340-440 Commercial crab gear—Possession of another's gear and tag tampering.** (1) **Possession of gear bearing another's crab pot tag or crab buoy tag.** It is unlawful for any person to possess, use, control, or operate any crab pot bearing a tag identifying the pot as belonging to another person, or any buoy not bearing tags issued by the department to the person possessing them, except:

(a) An alternate operator designated on a primary license may possess and operate crab buoys and crab pots bearing the tags of the license holder.

(b) Persons operating under a valid coastal gear recovery permit issued by the department may possess crab pots or buoys bearing the tags of another license holder, provided the permittee adheres to provisions of the permit.

(c) Persons operating under a valid coastal gear transport permit issued by the department may possess crab pots or buoys bearing the tags issued by another state, provided the permittee adheres to provisions of the permit.

(2) Violation of subsection (1) of this section is punishable under RCW 77.15.520, 77.15.522, 77.15.750, or 77.70.500, depending on the circumstances of the violation.

(3) **Pot tag or buoy tag tampering.** It is unlawful for any person to remove, damage, or otherwise tamper with crab buoy or pot tags not issued to that person, except: A person may possess the buoy tags or pot tags of another when the person is operating under a valid coastal gear recovery permit or emergency gear recovery permit issued by the department, and adheres to the permit's provisions.

(4) Violation of subsection (3) of this section is a gross misdemeanor punishable under RCW 77.15.180 Unlawful interference with fishing or hunting gear—Penalty.