



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 14-16-121 on 08/06/14;
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) Amending coastal commercial Dungeness crab rules.

WAC 220-52-041, Coastal Dungeness crab logbook requirements;
WAC 220-52-042, Commercial crab fishery—Buoy tag, pot tag, and buoy requirements;
WAC 220-52-045, Commercial crab fishery—Seasons and areas—Coastal; and
WAC 220-52-049, Commercial crab fishery—Gear limits—Coastal.

Hearing location(s):

WDFW Region 6 Headquarters
48 Devonshire Road
Montesano, WA 98563

Date: November 25, 2014 Time: 9:00 a.m.

Submit written comments to:

Name: Heather Reed, Coastal Marine Resources Policy Coordinator
Address: 48 Devonshire Road
Montesano, WA 98563
e-mail Heather.Reed@dfw.wa.gov
fax (360) 249-1229 by (date) November 25, 2014

Assistance for persons with disabilities: Contact

Tami Lininger by November 18, 2014

TTY (800) 833-6388 or (360) 902-2267

Date of intended adoption: On or after December 12, 2014

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Revisions to existing coastal commercial Dungeness crab rules to clarify the intent and improve enforceability of rules that describe the process and requirements for issuing replacement buoy tags and submitting coastal Dungeness crab logbooks.

Reasons supporting proposal: Changes to rules are needed to implement gear retrieval requirements for coastal Dungeness crab fishers to improve enforceability and minimize derelict crab gear. Based on recommendations from the Tri-State Dungeness crab Committee, changes to the season opening are needed to improve safety, enhance enforceability and provide for a coordinated season opening for the Washington and Oregon commercial Dungeness crab fishery.

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

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 22, 2014

TIME: 8:32 AM

WSR 14-21-167

DATE

October 22, 2014

NAME (type or print)

Joanna Eide

SIGNATURE

TITLE

Rules Coordinator

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.....	Heather Reed	Region 6 Headquarters, Montesano, WA	(360) 249-1202
Implementation....	Heather Reed	Region 6 Headquarters, Montesano, WA	(360) 249-1202
Enforcement.....	Chief Steve Crown	1111 Washington St. SE, Olympia, WA	(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: Heather Reed
Address: WDFW Region 6 Headquarters
48 Devonshire Road
Montesano, WA 98563

phone (360) 249-1202
fax (360) 249-1299
e-mail Heather.Reed@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: This proposal does not involve hydraulics rules.

Small Business Economic Impact Statement Amending Coastal Commercial Dungeness Crab Rules

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

This proposed rule change involves proposed modification of regulations pertaining to the coastal commercial Dungeness crab fishery. Specifically, the proposal makes changes to logbook requirements, regulations for replacement buoy tags, the pre-season gear set period, and establishes a new gear tending requirement.

The proposed change to the logbook requirement will require crab caught in Oregon and delivered into a Washington port be recorded in a logbook. This change brings Oregon-caught crab under the logbook reporting requirements already in place for all other crab delivered into a Washington port.

Changes to the replacement buoy tag program will change the dates when commercial fishermen are allowed to replace lost buoy tags allowing fishers to begin requesting replacement tags 15 days after the start of the season. This change will also reduce the number of replacement buoy tags allowed for each license owner. The proposed rule will require the primary or alternate operator fishing the gear to sign an affidavit stating the number of tags lost the location and date where the tags were last observed and, the presumed cause of the loss. The existing regulations require that the license owner sign an affidavit with similar reporting requirements.

Proposed changes to the pre-season gear period will extend the amount of time that commercial fishermen have to set their pots prior to the opening of the season. This change does not have any reporting or record keeping requirements.

The part of the proposal establishing a new gear tending requirement makes it unlawful to leave Dungeness crab pots deployed in Grays Harbor, Willapa Bay, the Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington for more than 21 consecutive days without making a Dungeness crab landing. This change will require fishers to remove gear when they are finished fishing, but does not impose any reporting or record keeping requirements.

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 as the requirements for

completing logbooks and obtaining replacement buoy tags are essentially the same as the requirements that have been in effect for some time.

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

No. Compliance with the changes to department requirements in this rule making will not cause businesses to lose sales or revenue because the changes do not involve any marked increase to pre-existing requirements already imposed on affected businesses.

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 the proposed changes to the rules in this project will be negligible as the changes do not involve any marked increase to pre-existing requirements.

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

Costs are negligible; the requirements in the rules already apply to affected small businesses.

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

WDFW has an active Dungeness crab Advisory Board appointed by the Director. WDFW staff discussed these changes with the Dungeness crab Advisory Board. In addition, WDFW staff have met with a larger ad hoc group of industry representatives and discussed many of the issues surrounding these proposed changes. WDFW sends out a notice of proposed rule-making projects after the proposed rule changes are filed to all coastal Dungeness crab license owners. 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:

Coastal commercial Dungeness crab fishers and license owners.

AMENDATORY SECTION (Amending WSR 07-23-090, filed 11/20/07, effective 12/21/07)

WAC 220-52-041 Coastal Dungeness crab logbook requirements. (1)

It is unlawful for any vessel operator engaged in fishing for Dungeness crab in the coastal commercial fishery to fail to have in possession, and complete a department-issued logbook for all fishing activity occurring in Grays Harbor, Willapa Bay, the Columbia River, or the Pacific Ocean waters (~~(adjacent to the state of)~~) for all crab deliveries to a Washington port. For the purposes of this section, "delivery" is defined as provided in RCW 77.65.210.

(2) It is unlawful for any vessel operator engaged in fishing to fail to comply with the following method and time frame related to harvest logbook submittal and record keeping:

(a) The department must receive a copy of the completed logbook sheets within ten days following any calendar month in which fishing occurred. Completed Dungeness crab harvest logs must be sent to the following address: Washington Department of Fish and Wildlife, Attention: Coastal Dungeness Crab Manager, 48 Devonshire Rd., Montesano, WA 98563.

(b) Vessel operators engaged in fishing for Dungeness crab in the coastal commercial fishery must complete a logbook entry for each day fished prior to offloading. Vessel operators responsible for submitting logs to the department must maintain a copy of all submitted logs for no less than three years after the fishing activity ended.

(c) Vessel operators can obtain logbooks by contacting the department's coastal Dungeness crab manager at 360-249-4628.

(3) A violation of this section is ((a misdemeanor)) an infraction, punishable under RCW (~~(77.15.280)~~) 77.15.160.

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

WAC 220-52-042 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) 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 220-52-045 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.

(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 and after a signed affidavit is received by ((the)) an authorized department ((from the owner of a coastal commercial crab fishery license)) 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 ~~((up to 15))~~ lost tags ~~((by January 15th, up to a total of 30 lost tags by February 15th, and up to a total of 45 lost tags after March 15th of each season))~~ according to the following schedule:

(I) Period 1, up to 15 tags.

(II) Period 2, 10 additional tags with no more than 25 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 ~~((up to 25))~~ lost tags ~~((by January 15th, up to a total of 50 lost tags by February 15th, and up to a total of 75 lost tags after March 15th of each season.~~

~~(C))~~ according to the following schedule:

(I) Period 1, up to 25 tags.

(II) Period 2, 15 additional tags with no more than 40 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.

(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.

(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 220-56-320.

(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 12-23-016, filed 11/9/12, effective 12/10/12)

WAC 220-52-045 Commercial crab fishery—Seasons and areas—Coastal. The open times and areas for coastal commercial crab fishing are as follows:

(1) Coastal, Pacific Ocean, Grays Harbor, Willapa Bay and Columbia River waters are ~~((open))~~ closed to commercial crab fishing ~~((December 1 through September 15 except that it is permissible to set baited crab gear beginning at 8:00 a.m. November 28))~~ except as provided by emergency rule.

(2) The department may delay opening of the coastal crab fishery due to softshell crab conditions. If the department delays a season due to softshell crab conditions, the following provisions will apply:

(a) After consultation with the Oregon department of fish and wildlife and the California department of fish and wildlife, the director may establish a softshell crab demarcation line by emergency rule.

(b) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area where the season opening is delayed due to softshell crab for the first 30 days following the opening of the area if the vessel was employed in the coastal crab fishery during the previous 45 days.

(c) It is unlawful for fishers to set crab gear in any area where the season opening is delayed, except that gear may be set as allowed by emergency rule. Emergency rules will allow setting ((64—hours)) crab gear in advance of the delayed season opening time.

(d) It is unlawful to fish for or possess Dungeness crab or to set crab gear in waters of the Pacific Ocean adjacent to the states of Oregon or California without the licenses or permits required to commercially fish for Dungeness crab within the state waters of Oregon or California. Washington coastal Dungeness crab permits are valid only in Washington state waters, the Columbia River, Willapa Bay, Grays Harbor, and the Pacific Ocean in federal waters north of the Washington/Oregon border (46°15'00"N. Lat.), extending 200 nautical miles westward.

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

WAC 220-52-049 Commercial crab fishery—Gear limits—Coastal.

(1) Coastal crab pot limit.

(a) It is unlawful for a person to take or fish for Dungeness crab for commercial purposes in Grays Harbor, Willapa Bay, the Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington unless the person's Dungeness crab coastal fishery license or the equivalent Oregon or California Dungeness crab fishery license is assigned a crab pot limit. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(b) It is unlawful for a person to deploy or fish more shellfish pots than the number of shellfish pots assigned to the license held by that person. A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(c) It is unlawful to use any vessel other than the vessel designated on a license to operate or possess shellfish pots assigned to that license. A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.530, Unlawful use of a nondesignated vessel—Penalty.

(d) It is unlawful for a person to take or fish for Dungeness crab or to deploy crab pots unless the person is in possession of valid documentation issued by the department that specifies the crab pot limit assigned to the license. A violation of this subsection is a

misdemeanor, punishable under RCW 77.15.540, Unlawful use of a commercial fishery license—Penalty.

(e) Beginning May 1, it is unlawful to leave Dungeness crab pots deployed in Grays Harbor, Willapa Bay, Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington for more than 21 consecutive days without making a Dungeness crab landing.

(2) **Grays Harbor pot limit of 200.** It is unlawful for any person to take or fish for crab for commercial purposes in Grays Harbor (Catch Area 60B) with more than 200 shellfish pots in the aggregate. It is unlawful for any group of persons using the same vessel to take or fish for crab for commercial purposes in Grays Harbor with more than 200 shellfish pots. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(3) **Determination of coastal crab pot limits.**

(a) The number of crab pots assigned to a Washington Dungeness crab coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license is based on documented landings of Dungeness crab taken from waters of the Pacific Ocean south of the United States/Canada border and west of the Bonilla-Tatoosh line, and from coastal estuaries in the states of Washington, Oregon, and California. Documented landings may be evidenced only by valid Washington state shellfish receiving tickets, or equivalent valid documents from the states of Oregon and California, which show Dungeness crab were taken between December 1, 1996, and September 16, 1999. Such documents must have been received by the respective states no later than October 15, 1999.

(b) The following criteria is used to determine and assign a crab pot limit to a Dungeness crab coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license:

(i) The three "qualifying coastal Dungeness crab seasons" are from December 1, 1996, through September 15, 1997; from December 1, 1997, through September 15, 1998; and from December 1, 1998, through September 15, 1999. Of the three qualifying seasons, the one with the most poundage of Dungeness crab landed on a license determines the crab pot limit for that license. A crab pot limit of 300 will be assigned to a license with landings totaling up to 35,999 pounds and a crab pot limit of 500 will be assigned to a license with landings totaling 36,000 pounds of crab or more.

(ii) Landings of Dungeness crab made in the states of Oregon or California on valid Dungeness crab fisheries licenses during a qualifying season may be used for purposes of assigning a crab pot limit to a Dungeness crab fishery license, provided that documentation of the landings is provided to the department by the Oregon department of fish and wildlife and/or the California department of fish and game.

(iii) Landings of Dungeness crab made in Washington, Oregon, and California on valid Dungeness crab fishery licenses during a qualifying season may be combined for purposes of assigning a crab pot limit, provided that the same vessel was named on the licenses, and the same person held the licenses. A crab pot limit assigned as a result of combined landings is invalidated by any subsequent split in ownership of the licenses. No vessel named on a Dungeness crab fishery license will be assigned more than one coastal crab pot limit.

(4) **Appeals of coastal crab pot limits.** An appeal of a crab pot limit by a coastal commercial license holder must be filed with the department on or before October 18, 2001. The shellfish pot limit as-

signed to a license by the department will remain in effect until such time as the appeal process is concluded.