



RULE-MAKING ORDER

CR-103E (July 2011)
(Implements RCW 34.05.350)

Agency: Washington Department of Fish and Wildlife

Emergency Rule Only

Effective date of rule:

Emergency Rules 16-21

- Immediately upon filing.
- Later (specify) 8:00 a.m. February 9, 2016

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: Amend Puget Sound commercial crab fishing rules

Citation of existing rules affected by this order:

Repealed: WAC 220-69-24000P
 Amended: WAC 220-52-040, WAC 220-12-020, WAC 220-69-240
 Suspended:

Statutory authority for adoption: RCW 77.04.012, 77.04.020 and 77.12.047

Other authority :

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding: This emergency rule will allow the retention of Tanner crab as incidentally caught in the Puget Sound commercial Dungeness crab fishery. Only male Tanner crab with a carapace width of 4.5 inches or more may be retained. Surveys by State and Treaty biologists have determined that nearly all Tanner crabs encountered in Puget Sound are *Chionoecetes bairdi* and not *Chionoecetes tanneri* as indicated in the permanent rule. Due to this finding, an adjustment has been made to WAC 220-12-020 in order to correct this error. These provisions are in conformity with agreed management plans with applicable tribes, entered into as required by court order. There is insufficient time to adopt permanent rules.

Date adopted: February 5, 2016

NAME (TYPE OR PRINT)

J W Unsworth

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 05, 2016

TIME: 12:11 PM

WSR 16-05-017

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	<u>3</u>	Amended	_____	Repealed	<u>1</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

NEW SECTION

WAC 220-52-04000M Commercial crab fishery—Unlawful acts.

Notwithstanding the provisions of WAC 220-52-040, WAC 220-52-043 and WAC 220-52-046, effective 8:00 a.m. February 9, 2016, until further notice, incidental catch may not be retained. It is unlawful to retain salmon, food fish, or any shellfish other than octopus and Tanner crabs (*Chionoecetes* spp.) that is taken incidental to any commercial crab fishing. Additionally, Tanner crabs may only be retained in Crab Region 1 (defined as all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B) and Crab Region 3-1 (defined as all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23A and 23B.) Tanner crabs retained must be males with a minimum width of 4.5 inches across the widest point in the carapace.

NEW SECTION

WAC 220-12-02000B Shellfish—Classification.

Notwithstanding the provisions of WAC 220-12-020, effective 8:00 a.m. February 9, 2016, until further notice, the following species is classified as shellfish under RCW 77.12.047 and is subject to the provisions of this title:

Crab

Tanner crab *Chionoecetes* spp.

NEW SECTION

WAC 220-69-24000Q Duties of commercial purchasers and receivers.

Notwithstanding the provisions of WAC 220-69-240, effective at 8:00 am, February 9, 2016, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by non-treaty fishers from Puget Sound, to fail to report to the department the previous day's purchases by 10:00 a.m. the following day. Reports must be made by fax to (425) 338-1066 or by e-mail at crabreport@dfw.wa.gov, and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, total number of pounds of crab caught by non-treaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area. This rule also applies to the incidental take of Tanner crabs (*Chionoecetes* spp.) during the Dungeness crab fishery.

REPEALER

The following section of the Washington Administrative code is repealed effective 8:00 a.m. February 9, 2016:

WAC 220-69-24000P Duties of commercial purchasers and receivers (15-442)

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

(x) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

() That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

() That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, 2011, 2012 or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for finding: This emergency rule will allow the retention of Tanner crab as bycatch in the Puget Sound commercial Dungeness crab fishery. Only male Tanner crab with a carapace width of 4.5 inches or more may be retained as by catch. Surveys by State and Treaty biologists have determined that nearly all Tanner crabs encountered in Puget Sound are *Chionoecetes bairdi* and not *Chionoecetes tanneri* as indicated in the permanent rule. Due to this finding, an adjustment has been made to WAC 220-12-020 in order to correct this error. These provisions are in conformity with agreed management plans with applicable tribes, entered into as required by court order. There is insufficient time to adopt permanent rules.

(16-21, 2/5/2016)