



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON
FILED

DATE: April 28, 2020

TIME: 12:16 PM

WSR 20-10-038

Agency: Washington Department of Fish and Wildlife (WDFW)

Title of rule and other identifying information: (describe subject)
WAC 220-340-490 Commercial crab fishery – Coastal gear recovery permits.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This rule change incorporates revisions to RCW 77.50.500 resulting from the passage of HB 2250 by the Washington State Legislature in 2020 into WAC 220-340-490.

This rule change would allow the recovery of derelict crab gear as early as May 1, prior to the close of the commercial Dungeness crab season. Gear recovery would be allowed after May 1 when a reduced pot limit is in effect and summer buoy tags are required. This measure would allow crab fishers to recover gear that is not properly marked with a summer buoy tag. Removal of this gear would avoid this gear becoming lost or abandoned and potentially increasing the likelihood of entangling a whale or other marine life.

Reasons supporting proposal: This proposed rule change is being implemented in conjunction with a reduced pot limit and summer buoy tag requirement, which was approved by the Fish and Wildlife Commission in January 2020. These measures are intended to reduce the likelihood of whale entanglements in the coastal Dungeness crab fishery.

The summer buoy tag requirement is needed to enforce the reduced pot limit, but also distinguishes pots without a summer buoy tag as no longer actively being fished. Essentially, any gear that does not have a summer buoy tag after May 1 is unlawfully fishing. This rule change provides the mechanism to recover gear that does not have a summer buoy tag before the end of the season, which greatly improves the chance that it will be recovered and removed from the ocean; thus, accomplishing the objective of reducing the likelihood of whale entanglements.

Statutory authority for adoption: RCW 77.040.020, 77.12.045, and 77.12.047

Statute being implemented: RCW 77.04.020, 77.12.045, 77.12.047, and 77.70.500

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:

Name of proponent: (person or organization) WDFW

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Heather Hall	1111 Washington St. SE, Olympia, WA	(360) 902-2487
Implementation:	Heather Hall	1111 Washington St. SE, Olympia, WA	(360) 902-2487
Enforcement:	Steve Bear, Police Chief	1111 Washington St. SE, Olympia, WA	(360) 902-3463

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): This rule change incorporates without material change revisions to RCW 77.50.500 resulting from the passage of HB 2250 by the Washington State Legislature in 2020 into WAC 220-340-490. RCW 77.50.500 regulates the same subject matter and conduct as the incorporating rule. Through the Delegation of Authority provided by the Fish and Wildlife Commission to the Director, the Director has the authority to adopt expedited rules.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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AND RECEIVED BY (date) July 6, 2020

Date: April 28, 2020

Name: Michele K Culver

Title: Agency Rules Coordinator

Signature:



WAC 220-340-490 Commercial crab fishery—Coastal gear recovery permits. (1) **Emergency coastal crab gear recovery permit.** Emergency permits are granted on a case-by-case basis to allow crab fishers to recover shellfish pots that were irretrievable at the end of the lawful season opening due to extreme weather conditions. The director or director's designee may grant an emergency coastal crab gear permit once a commercial crab season is closed. Crab fishers must notify and apply to the department's enforcement program for such emergency permits within 24 hours prior to the close of the commercial crab season.

(2) **Coastal crab gear recovery permit.** 15 days after the close of the primary coastal commercial crab season and from May 1 through September 15, the director or director's designee may grant a coastal crab gear recovery permit for licensed coastal Dungeness crab fishers to recover crab pots that remain in the ocean and belong to state licensed fishers.

(3) It is unlawful to fail to follow the provisions of a coastal crab gear recovery permit. Violation of this section is a misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.