



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 09, 2021

TIME: 11:26 AM

WSR 21-05-027

Agency: Department of Fish and Wildlife (Order No. 21-11)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify)

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

- Yes
 - No
- If Yes, explain:

Purpose: Amends rules for coastal commercial crab fishery

Citation of rules affected by this order:

New:
 Repealed: WAC 220-340-42000E, WAC 220-340-45000U
 Amended: WAC 220-340-420, WAC 220-340-450
 Suspended:

Statutory authority for adoption: RCW 77.04.012, 77.04.020, 77.12.045 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.

Reasons for this finding: Mandatory, minimum meat recovery requirements for coastal crab will be achieved by the opening dates contained herein. The Washington Department of Health has determined that while the meat in Dungeness crab in all areas of the Washington coast is safe for human consumption, the viscera from crab caught between the WA/OR border and Point Chehalis, WA including Willapa Bay are unsafe for human consumption and have issued a recommendation requiring evisceration of all crab caught in this area. To strengthen the enforcement of an evisceration requirement needed to protect public health, all crab landed into WA from any west coast area south of Point Chehalis, Washington must be eviscerated. Domoic acid levels in the crab viscera in the area north of Point Chehalis, Washington are below federal action levels and are considered safe for human consumption, landings of crab from this area do not require similar processing restrictions to remove the viscera necessary to protect public health. However, restrictions on where fishermen may fish their gear are needed to ensure that crab are not harvested from areas with high domoic acid in the viscera (south of Point Chehalis, WA) and reported as landings from areas where domoic acid in viscera are low (north of Point Chehalis, WA). Further delaying the opening of the coastal commercial Dungeness crab fishery until domoic acid in crab viscera is below federal action levels, which could take several months, would cause significant economic harm to the coastal crab industry and to the coastal communities dependent on this highly valuable fishery. In addition, delaying the season into spring poses an additional risk to marine mammals including Endangered Species Act (ESA) listed humpback whales and Marine Mammal Protection Act (MMPA) Gray whales which are more abundant off the Washington coast in the spring by increasing the risk of entanglement with commercial crab gear. Emergency rules are

necessary to implement a longer gear set period which will allow for safer fishing conditions and improved enforceability of area restrictions when gear is set. A delay due to elevated marine toxins aligns with the Tri-State Crab Agreement and similar rules in Oregon and California. Tribal Special Management Area descriptions conform with recent State/Tribal Agreements. There is insufficient time to adopt permanent rules.

**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 on the agency's own initiative:

New	2	Amended	___	Repealed	2
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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	___

Date Adopted: February 9, 2021

Name: Kelly Susewind

Title: Director

Signature:



NEW SECTION

WAC 220-340-42000F Commercial crab fishery—Unlawful acts.

Notwithstanding the provisions of WAC 220-340-420, effective immediately until further notice:

- (1) It is unlawful to land, or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel, unless:
 - (a) The vessel hold inspection certificate numbers are recorded on all shellfish fish receiving tickets completed for coastal Dungeness crab landings until further notice and;
 - (b) The vessel has a valid Oregon vessel inspection certificate or a Washington vessel inspection certificate dated on or after February 15, 2021 identified with an individual inspection number that includes the letters “EVS” indicating that evisceration is required for all crab sold by this license or the letters “NOR” indicating north of Point Chehalis, WA (46°53.18 N. Lat) and evisceration is not required.
 - (c) A Washington vessel inspection certificate is only valid when signed by an authorized WDFW employee.

- (2) It is unlawful to possess or deliver Dungeness crab unless the following conditions are met:
 - (a) All crab caught north of Point Arena, CA and south of Point Chehalis, WA (46°53.18 N. Lat) including Willapa Bay must be delivered to a processing facility with an approved Hazard Analysis and Critical Control Point (HACCP) plan and eviscerated or;
 - (b) Dungeness crab are delivered to a Washington Department of Fish and Wildlife licensed Fish Dealer and/or Wholesale Fish Buyer and transported or sold to a facility with an approved HACCP plan and eviscerated. The vessel inspection number must accompany the crab to the final designation where it will be eviscerated.

- (3) It is unlawful to donate, sell or attempt to sell to retailers or consumers live or whole Dungeness crab when caught north of Cape Falcon, OR (45°46'00" N. Lat) and south of Point Chehalis, WA (46°53.18 N. Lat).

- (4) It is unlawful for a vessel not designated on a Dungeness crab coastal fishery license to deploy crab pot gear except under the following conditions:
 - (a) The vessel deploys pot gear only during the 73-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date;
 - (b) The undesignated vessel carries no more than 250 crab pots at any one time; and;
 - (c) The primary or alternate operator of the crab pot gear named on the license associated with the gear is on board the undesignated vessel while the gear is being deployed.

- (5) Unless otherwise amended all other provisions of the permanent rule remain in effect

NEW SECTION

WAC 220-340-45000V Commercial crab fishery—Seasons and areas—Coastal.

Notwithstanding the provisions of WAC 220-340-450, effective immediately until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section.

- (1) Open area: The area from the WA/OR border (46°15.00) to the US-Canadian border.
 - (a) For the purposes of this section, the waters of Willapa Bay include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.
 - (b) It is permissible to set crab gear beginning at 8:00 a.m., February 13, 2021.
 - (c) It is permissible to pull crab gear beginning at 9:00 a.m., February 16, 2021.
- (2) No license or vessel may set gear south of Point Chehalis, WA (46° 53.18 N. Lat) unless they have been issued a valid Oregon vessel inspection certificate dated on or after February 15, 2021 or a Washington vessel inspection certificate dated on or after February 15, 2021 identified with a vessel inspection number that includes the letters “EVS” indicating that evisceration is required for all crab landed by this license or vessel until further notice.
- (3) Licenses or vessels issued a valid Washington crab vessel inspection certificate dated on or after February 15, 2021 identified with a vessel inspection number that includes the letters “NOR” may land crab for live, whole cooked or evisceration.
- (4) It unlawful for licenses and vessels with a vessel inspection number that includes the letters “NOR” to deploy or operate shellfish pots south of Point Chehalis, WA (46°53.18 N. Lat).
- (5) 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 marine biotoxins 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.
- (6) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:
 - (a) Northeast Corner (Raft River): 47°28.00’ N. Lat. 124°20.70’ W. Lon.
 - (b) Northwest Corner: 47°28.00’ N. Lat. 124°34.00’ W. Lon.
 - (c) Southwest Corner: 47°08.00’ N. Lat. 124°25.50’ W. Lon.
 - (d) Southeast Corner (Copalis River): 47°08.00’ N. Lat. 124°11.20’ W. Lon.
- (4) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:
 - (a) Northeast Corner (Cape Johnson): 47°58.00’ N. Lat. 124°40.40’ W. Lon.
 - (b) Northwest Corner: 47°58.00’ N. Lat. 124°49.00’ W. Lon.
 - (c) Southwest Corner: 47°40.50’ N. Lat. 124°40.00’ W. Lon.
 - (d) Southeast Corner (Destruction Island): 47°40.50’ N. Lat. 124°24.43’ W. Lon.
- (5) The Makah special management area (SMA) is closed to fishing until further notice. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

- (a) Northeast Corner (Tatoosh Island)
- (b) Northwest Corner: 48°19.50' N. Lat. 124°50.45' W. Lon.
- (c) Southwest Corner: 48°02.15' N. Lat. 124°50.45' W. Lon.
- (d) Southeast Corner: 48°02.15' N. Lat. 124°41.00' W. Lon.

(6) Unless otherwise amended all other provisions of the permanent rule remain in effect.

REPEALERS

The following sections of the Washington Administrative Code are repealed:

WAC 220-340-42000E Commercial crab fishery—unlawful acts. (20-257)

WAC 220-340-45000U Commercial crab fishery—Seasons and areas—Coastal. (20-255)