



# 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: March 22, 2021

TIME: 9:50 AM

WSR 21-07-100

**Agency:** Department of Fish and Wildlife (Order 21-36)

**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:** The purpose of this emergency rule is to open the commercial crab fishery in the Makah SMA.

**Citation of rules affected by this order:**

- New:
- Repealed: WAC 220-340-42000H; WAC 220-340-45000X
- 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 and Grays Harbor 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 and Willapa Bay and Grays Harbor must be eviscerated. Domoic acid levels in the crab viscera in the area north of Point Chehalis, Washington (except in Grays Harbor) 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 Willapa Bay and Grays Harbor) 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. The Westport Boat Basin is closed to commercial crab fishing to prevent conflicts with vessel traffic in a limited area. New hold inspections

will provide flexibility and by allowing fishers to access different markets. This rule makes it clear that any new hold inspection certificate issued will supersede any previous version issued to the same license or vessel to allow accurate tracking. 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	<u>2</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	___

**Date Adopted:** March 22, 2021

**Name:** Kelly Susewind

**Title:** Director

**Signature:**



## NEW SECTION

### **WAC 220-340-42000I 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 ) (except Grays Harbor) and evisceration is not required.
  - (c) A Washington vessel inspection certificate is only valid when signed by an authorized WDFW employee.
  - (d) A Washington vessel hold inspection certificate dated on or after March 18, 2021 supersedes any hold inspection certificate previously issued to the same license or associated designated vessel.
- (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 and Grays Harbor 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), and Willapa Bay and Grays Harbor.
- (4) It is unlawful for a vessel to use more than 200 pots in the Makah SMA beginning immediately, until 8:00 A.M. April 17, 2021. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:
  - Fax transmission to Robert Morgan at 360-249-1229;
  - E-mail to Robert Morgan at [Robert.Morgan@dfw.wa.gov](mailto:Robert.Morgan@dfw.wa.gov); or
  - Telephone call to Robert Morgan at 360-249-1206.
- (5) Unless otherwise amended all other provisions of the permanent rule remain in effect

## NEW SECTION

### **WAC 220-340-45000Y 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. 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.
- (2) No license or vessel may set gear south of Point Chehalis, WA (46° 53.18 N. Lat) and Willapa Bay and Grays Harbor 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) and Willapa Bay and Grays Harbor.
- (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.
- (7) 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.

(8) Effective immediately the Makah special management area (SMA) is open to fishing. 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. |

(9) It is unlawful to fish for Dungeness crab in the Westport Boat Basin as defined in WAC 220-300-320.

(10) 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 220-340-42000H Commercial crab fishery—unlawful acts. (21-32)

WAC 220-340-45000X Commercial crab fishery—Seasons and areas—Coastal. (21-32)