



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

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FILED

DATE: June 23, 2021

TIME: 12:56 PM

WSR 21-14-001

**Agency:** Washington Department of Fish and Wildlife

**Original Notice**

**Supplemental Notice to WSR**

**Continuance of WSR**

**Preproposal Statement of Inquiry was filed as WSR 21-08-061** ; 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); or**

**Proposal is exempt under RCW \_\_\_\_\_.**

**Title of rule and other identifying information:** (describe subject) Amending coastal commercial Dungeness crab rules and implementing electronic fish ticket reporting for select Washington shellfish fisheries.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
August 5 - 7, 2021	8:00 AM	Webinar and teleconference	Visit our website at <a href="http://wdfw.wa.gov/about/commission/meetings">http://wdfw.wa.gov/about/commission/meetings</a> or contact the Commission office at (360) 902-2267 email: <a href="mailto:commission@dfw.wa.gov">commission@dfw.wa.gov</a> for instruction on how to join the meeting

**Date of intended adoption:** On or after October 21, 2021 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Heather Hall

Address: Post Office Box 43200  
Olympia WA

Email: [24362@PublicInput.com](mailto:24362@PublicInput.com)

Fax:

Other: Public Comment Website: <https://publicinput.com/V3151>

By (date) August 7, 2021

**Assistance for persons with disabilities:**

Contact Title VI/ADA Compliance Coordinator

Phone: 360) 902-2349, TTY (711)

Fax:

TTY:

Email: [Title6@dfw.wa.gov](mailto:Title6@dfw.wa.gov)

Other: <https://wdfw.wa.gov/accessibility/requests-accommodation>

By (date) August 5, 2021

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** Proposed rule changes would make it mandatory for several non-treaty coastal and Puget Sound commercial shellfish fisheries to report all landings into Washington ports using electronic fish tickets. The purpose of this change is to improve the timeliness of data collection and is needed to narrow data gaps, support management of catch relative to quotas, and better respond to state-tribal co-management needs.

Proposed rule changes for the coastal commercial Dungeness crab fishery are necessary to reduce the risk of coastal commercial Dungeness crab gear becoming entangled with marine mammals, including humpback whales which are listed under the Endangered Species Act. Specifically, changes focused on reducing the risk of entanglements would, eliminate the replacement buoy tag allowance, reduce the amount of time that crab gear can be left in the ocean unattended, and allow experimental gear testing by coastal Dungeness crab license holders only when authorized through a permit issued by the WDFW Director.

Additional changes to coastal commercial Dungeness crab rules are necessary to provide clarity to existing rule language, that that describe the pre-season gear set period and clarify season opening provisions if the season is delayed due to biotoxins.

**Reasons supporting proposal:**

Mandatory Electronic Fish Ticket Reporting (WAC 220-352-035, WAC 220-352-305, WAC 220-352-060, WAC 220-352-140)

Electronic fish ticket reporting will move several coastal and Puget Sound commercial shellfish fisheries from a voluntary electronic fish ticket reporting program to a mandatory requirement for deliveries of Dungeness crab, ocean pink shrimp, pink shrimp, coonstripe shrimp, sidestripe shrimp, or spot shrimp into Washington ports. Mandatory electronic reporting streamlines the reporting process and reduces the time between landings and when catch information is available to managers. This reduced reporting time allows managers to be more responsive to adjustments that may be needed to meet harvest sharing agreements with tribal co-managers. A program that allows a fish buying business (dealer) to use electronic fish tickets on a voluntary basis has been in place since 2018 and has allowed interested dealer to become familiar with electronic reporting tools. Currently, approximately 80 percent of coastal Dungeness crab landings are reported using the voluntary electronic fish ticket program. The voluntary reporting period has also allowed WDFW time to develop a mobile platform that will allow small dealers that may not have access to a computer at the time of delivery to complete an electronic fish ticket using a cell phone or tablet. This application is currently being field tested to ensure it will support the mandatory requirement by the implementation date. The proposed electronic fish ticket reporting requirements is also beneficial to participants and shellfish dealers because it eliminates the burden of duplicative reporting requirements that include submitting paper fish receiving tickets to WDFW, instead the proposal will allow participants and shellfish dealers to submit the same information electronically.

Additional changes to coastal Dungeness crab regulations are necessary to continue to implement measures that align with conservation plan objectives directed at reducing the risk of coastal Dungeness crab gear becoming entangled with marine mammals, including those listed under the Endangered Species Act (ESA) and protected by the Marine Mammal Protection Act (MMPA).

Eliminate Replacement Buoy Tag Program (WAC 220-340-430):

Buoy tags are required on all crab gear fished in the coastal Dungeness crab fishery. Currently, a small number of replacement tags can be obtained if tags are lost between March 1 and April 30. Eliminating the replacement buoy tag program will reduce the option for participants to obtain replacement tags during the season and will reduce the entanglement risk by reducing the number of lines in the water. WDFW has been working with participants to progressively reduce the number of replacement tags allowed and this change would be the final step in that process. In recent years, participants have requested very few tags through the replacement tag program, eliminating the program will streamline and improve enforcement of the pot limit and have a minor impact on participants.

Gear Tending Requirement (WAC 220-340-480):

Currently, each year after May 1, a landing must be made every 21 days on actively fished gear. This proposed rule would reduce the time that gear can be in the water without an associated landing to every 14-days after May 1. This rule focuses on the period after May 1 when participants may be in the process of moving to other fisheries and ensures that gear that is not actively fished is removed from the water. This gear tending requirement provides enforcement staff with a regulatory structure for confiscating gear that is not actively being fished and contributes to efforts to reduce entanglements with marine mammals by minimizing gear in the water during the period when whales are more likely to be present off the Washington coast.

Experimental Gear Testing (WAC 220-340-430, WAC 220-340-435, 220-353-020)

Currently, the only gear allowed when fishing commercially for Dungeness crab are pots with a line attached from the pot to a buoy at the surface. This rule change would provide a regulatory pathway to allow license holders to consider, and experiment with innovative tools that may reduce the risk of entanglements with ESA and MMPA protected marine mammals. This experimental opportunity would also allow gear innovators to work directly with participants to test gear in the unique conditions off the Washington coast and will inform whether tools that may be effective in one area, are a reasonable option for the coastal crab fishery. Permits would only be issued to license owners and would include specific provisions that require close coordination with WDFW managers and the Enforcement Program.

Minor Changes

73-hour gear pre-set period (WAC 220-340-420) – implements the gear set period, which is currently adopted each year by emergency rule, into permanent regulation.

Gear recovery (WAC 220-340-490) – clarifies that gear recovery is now allowed after May 1, and after the September 15 close of the coastal commercial crab season.

Biotoxin delays (WAC 220-340-450) – clarifies that fair start provisions will be applied when the crab season is delayed due to meat quality and the presence of biotoxins.

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

**Statute being implemented:** RCW 77.040.020, 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:

**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 Hall	1111 Washington St. SE, Olympia, WA	360-490-9628
Implementation:	Dan Ayres - Coast	Region Six Office, Montesano, WA	360-249-1209
	Chris Eardley – Puget Sound	Port Townsend District Office, Port Townsend	360-302-0302
Enforcement:	Chief Steve Bear	1111 Washington St. SE, Olympia	360-902-2373

**Is a school district fiscal impact statement required under RCW 28A.305.135?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**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:  
TTY:  
Email:  
Other:

No: Please explain: A cost-benefit analysis is not required for this rulemaking under RCW 34.05.328(5)(a).

**Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- |   |  |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)<br>(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> RCW 34.05.310 (4)(g)<br>((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of exemptions, if necessary:

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated.


Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

Small Business Economic Impact Summary Statement: The portion of the proposed rulemaking directed at making electronic fish ticket reporting may impose more-than-minor costs on businesses in the state of Washington. Other proposed changes for the coastal crab fishery are not likely to impose more than minor costs to businesses. The costs associated with compliance with the proposed mandatory electronic fish ticket rulemaking may disproportionately impact small businesses. However, the value of costs to comply with the proposed rulemaking are still expected to be negligible for the vast majority of potentially impacted businesses, regardless of size. The Department has provided significant opportunities for stakeholder input during the development of the proposed rulemaking in recent years. As a result of this stakeholder input, the Department has developed a mobile application to mitigate the potential impacts to small businesses by providing a more accessible, low-cost platform from which to comply with the proposed rule. Job gains or losses are not anticipated as a result of this proposed rule, and businesses are not expected to lose access to revenue as a result of the proposed rule. While some may choose not to purchase fish products covered under the proposed rulemaking if electronic submission of fish tickets is required, other fish and fish products will remain available for purchase from harvesters using paper tickets.

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Heather Hall  
Address: 1111 Washington St. SE, Olympia, WA  
Phone: 360-490-9628  
Fax: 360-902-2943  
TTY:  
Email: Heather.Hall@dfw.wa.gov  
Other:

<b>Date:</b> June 23, 2021
<b>Name:</b> Annie Szvetecz
<b>Title:</b> Agency Rules Coordinator

<b>Signature:</b> 
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**WAC 220-352-035 Requirement to prepare fish receiving ticket forms completely and accurately—Determining the appropriate form.**

(1) Receivers must completely, accurately, and legibly prepare fish receiving tickets using a department-approved electronic or department-supplied paper form, as further specified in this section.

(2) Receivers must use an electronic fish receiving ticket form for the following:

(a) Deliveries from vessels fishing under the Pacific Fishery Management Council's Pacific Coast Groundfish Fishery Management Plan and related regulations under 50 C.F.R., Part 660. This requirement includes deliveries from research vessels but excludes deliveries of groundfish made under the trip limits for salmon troll (~~and pink shrimp trawl~~) vessels.

(b) Deliveries from directed commercial halibut vessels fishing under 50 C.F.R., Part 300 or vessels conducting research surveys for the International Pacific Halibut Commission if not previously delivered in another jurisdiction.

(c) Deliveries of groundfish harvested from the offshore waters off Alaska or British Columbia if not previously delivered in another jurisdiction.

(d) Deliveries of Dungeness crab, ocean pink shrimp, pink shrimp, coonstripe shrimp, sidestripe shrimp, or spot shrimp, and any other lawfully landed species taken incidentally by vessels fishing and delivering under a coastal Dungeness crab license, a Puget Sound Dungeness crab license, an ocean pink shrimp delivery license, an ocean pink shrimp single delivery license, a Puget Sound shrimp pot license, a Puget Sound shrimp trawl license, or a coastal spot shrimp license issued by the department.

(3) Receivers not required to report under subsection (2) of this section may report using electronic fish receiving ticket forms if they enter into an electronic fish receiving ticket reporting agreement with the department.

(a) The department reserves the discretion to limit the use of electronic fish receiving ticket reporting agreements based on species, gears, areas, times, or other factors.

(b) Electronic fish receiving ticket reporting agreements will identify how to access the appropriate electronic forms and may include terms and conditions related to the timing and manner of completion and submittal.

(c) Receivers may not submit paper fish receiving tickets for deliveries covered by an electronic fish receiving ticket reporting agreement.

(d) The department or receiver may terminate an electronic fish receiving ticket reporting agreement with thirty days notice to the other party.

(e) A receiver who fails to comply with the terms of the electronic fish receiving ticket agreement commits a violation of this chapter.

(4) A receiver that is not required or authorized by agreement to use electronic fish receiving ticket forms must report using the appropriate paper form. There are separate forms for nontreaty troll

fish, marine fish, shellfish, and Puget Sound salmon; and separate forms for treaty fish and treaty shellfish.

**WAC 220-352-060 Completion, submission, distribution, and retention of copies of nontreaty fish receiving tickets.** (1) Original receivers must complete state of Washington nontreaty fish receiving tickets by recording the delivery amount using the appropriate weight or quantity measure for all fish at the conclusion of the offload and prior to the fish being processed or transported away from the delivery site.

(2) Fish receiving tickets paper forms must be made out in quadruplicate (four copies) at the time of delivery of fish. Original receivers must use fish receiving tickets in numerical sequence, starting with the lowest numbered ticket issued. Original receivers reporting using paper forms must:

(a) Mail the state copy (green) of the fish receiving ticket to the department of fish and wildlife (department), except for original receivers who submit a fish receiving ticket in portable document format (PDF) to satisfy quick reporting requirements for salmon and sturgeon under WAC 220-352-315, 220-352-320, 220-352-325 and 220-352-330. The department must receive the state copy no later than the sixth working day after the day the original receiver completes the fish ticket.

(b) Retain the dealer copies (white and yellow) of the fish receiving ticket for his or her records.

(c) The deliverer must retain the fisher copy (gold) for his or her records.

(3) Original receivers who submit fish receiving tickets using an electronic form must:

(a) (i) Submit the ticket within twenty-four hours of completion of the delivery if required ((by WAC 220-352-035(2-)) to report electronically under WAC 220-352-035(2) except:

(ii) For deliveries made by vessels fishing and delivering under a coastal Dungeness crab license, the receiver must submit the ticket by the close of the next business day after the delivery is completed.

(b) Submit the ticket in compliance with the timely reporting conditions set forth in ((an)) the electronic fish receiving ticket reporting agreement if reporting voluntarily under WAC 220-352-035(3).

~~((c) Print and retain a copy of the completed electronic fish receiving ticket for three years unless an alternative fish ticket retention requirement is specified in an electronic fish receiving ticket agreement.))~~ (4) Original receivers who submit fish receiving tickets using an electronic form must print and retain a copy of the completed electronic fish receiving ticket for three years unless:

(a) The fish receiving ticket is signed electronically under WAC 220-352-140 (4)(c) and an electronic copy of the signed and completed fish receiving ticket is available to the department for a minimum of three years; or

(b) An alternative fish ticket retention requirement is specified in the electronic fish receiving ticket agreement governing the voluntary reporting of the delivery.



**WAC 220-352-140 Signatures—Fish receiving tickets.** (1) The fisher and original receiver of both treaty and nontreaty fish or shellfish must sign the appropriate completed fish receiving ticket paper form to certify that all entries on the ticket are accurate and correct.

(2) If an agent of the fisher delivers fish or shellfish to the original receiver, the receiver and the agent must complete and sign the fish receiving ticket together with the transportation ticket. The receiver and fisher shall assume complete responsibility for the correctness of all entries on the fish receiving ticket.

(3) Any employee of a licensed wholesale fish buyer who is authorized to receive or purchase fish or shellfish for that buyer on the premises of the primary business address or any of its plant locations as declared on the license application or agreement described under WAC 220-352-035(3), is authorized to initiate and sign fish receiving tickets on behalf of his or her employer. The business, firm, or licensed wholesale fish buyer that the receivers are operating under is responsible for the accuracy and legibility of all documents initiated in their name by any employee or agent.

(4) If an original receiver submits an electronic fish receiving ticket form, the fisher and original receiver must ~~((sign the printed completed fish receiving ticket form to certify that all entries on the ticket are accurate and correct, unless otherwise specified in an electronic fish receiving ticket reporting agreement (WAC 220-352-035(3)))~~) certify that all entries on the ticket are accurate and correct by either:

(a) Signing the printed and completed copy of the fish receiving ticket required under WAC 220-352-060(4);

(b) Following the terms and conditions for signature specified in an electronic fish receiving ticket reporting agreement (WAC 220-352-035(3)); or

(c) Signing electronically if the electronic form provided by the department directs the fisher and receiver to do so.

(5) If the receiver must complete an electronic fish receiving ticket form away from the place of delivery and it is impractical for the fisher to comply with subsection (4) of this section, the deliverer and receiver must sign the completed transportation ticket required by WAC 220-352-230 and attach it to the printed and signed copy of the completed electronic fish receiving ticket form, unless otherwise specified in an electronic fish receiving ticket reporting agreement (WAC 220-352-035(3)).

AMENDATORY SECTION (Amending WSR 18-11-052, filed 5/10/18, effective 6/10/18)

**WAC 220-352-305 Coastal Dungeness crab—Additional reporting requirements.** Original receivers of Dungeness crab from the Pacific Ocean, Coastal Washington, Grays Harbor, Willapa Harbor, and Columbia River waters must enter the crab vessel hold inspection certificate number on all (~~shellfish~~) nontreaty fish receiving tickets during the period specified in emergency regulations. (~~The crab inspection certificate number must be entered legibly in the space indicated for dealer's use or where specified by the terms of an electronic fish ticket reporting agreement~~) (WAC 220-352-035(3)).

**WAC 220-353-020 General gear rules—Commercial fishery.** (1)(a)

Commercial shellfish pot, bottom fish pot, set line and set net gear must be marked with a buoy that bears the department approved and registered buoy brand issued to the license in a visible and legible manner. It is unlawful for the owner or operator of any commercial food fish or shellfish gear to leave the gear unattended in state or off-shore waters unless the gear is marked. Violation of this subsection is punishable under RCW 77.15.520 or 77.15.522, depending on the circumstances of the violation.

(b) Exemptions may apply for commercial shellfish pot gear otherwise authorized for use by permit issued by the director.

(2) Violations of the following are punishable under 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty:

(a) Buoys affixed to unattended commercial food fish or shellfish gear must be visible on the surface of the water except during strong tidal flow (~~(or)~~), extreme weather conditions, or as authorized by permit issued by the director.

(b) It is unlawful to operate any gill net unless there is a buoy, float, or other marker affixed within 5 feet of each end of the net and visible on the cork line. The buoy, float, or other marker must be labeled legibly and permanently with the name and gill-net license number of the owner of the net.

(c) It is unlawful to leave a gill net unattended at any time in the commercial salmon fishery.

(d) It is unlawful to allow salmon, sturgeon, or fish unlawful to retain that are entangled in commercial nets to pass through a power block or onto a power reel or drum.

(3) It is unlawful for any person who loses or abandons non-tribal commercial net fishing gear within the waters of the state to fail to:

(a) Contact the department of fish and wildlife within twenty-four hours of the loss, by phone at 855-542-3935, or online at <http://wdfw.wa.gov/fishing/derelict/>; and

(b) Provide the following required information:

(i) Type of gear;

(ii) General location of the gear;

(iii) Latitude (if known) of the gear;

(iv) Longitude (if known) of the gear;

(v) Estimated water depth where the gear is located;

(vi) Date the gear was lost;

(vii) Time the gear was lost;

(viii) Name of gear's owner;

(ix) Telephone number of the gear's owner; and

(x) Email address (if available) of the gear's owner.

(c) Failing to report lost or abandoned nontribal commercial net gear under this subsection is an infraction under RCW 77.15.160.

**WAC 220-340-420 Commercial crab fishery—Unlawful acts. (1)**

**Crab size and sex restrictions.** It is unlawful for any person acting for commercial purposes to take, possess, deliver, or otherwise control:

(a) Any female Dungeness crab; or

(b) Any male Dungeness crab measuring less than 6-1/4 inches, caliper measurement, at the widest part of the shell immediately in front of the points (tips).

(2) Violation of subsection (1) of this section is a gross misdemeanor or class C felony depending on the value of fish or shellfish taken, possessed, or delivered, punishable under RCW 77.15.550 (1)(c).

(3) **Incidental catch may not be retained.** It is unlawful to retain salmon, food fish, or any shellfish other than octopus that is taken incidental to any commercial crab fishing.

(4) **Net fishing boats must not have crab on board.** It is unlawful for any person to possess any crab on board a vessel geared or equipped with commercial net fishing gear while fishing with the net gear for commercial purposes or while commercial quantities of food fish or shellfish are on board. Violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550(1), depending on the quantity of crab taken or possessed.

(5) **Area must be open to commercial crabbing.** It is unlawful for any person to set, maintain, or operate any baited or unbaited shellfish pots or ring nets for taking crab for commercial purposes in any area or time that is not open for commercial crabbing by rule of the department, except when acting lawfully under the authority of a valid gear recovery permit as provided in WAC 220-340-450.

(6) Violation of subsection (5) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.550, or a gross misdemeanor punishable under RCW 77.15.522 depending on the circumstances of the violation.

(7) **When it is unlawful to buy or land crab from the ocean without a crab vessel inspection.** It is unlawful for any fisher or wholesale fish buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, the Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel that has not been issued a Washington crab vessel inspection certificate during the first 30 days following the opening of a coastal crab season.

(a) Authorized department personnel will perform inspections for Washington crab vessel inspection certificates no earlier than 12 hours prior to the opening of the coastal crab season and during the following 30-day period.

(b) A Washington crab vessel inspection certificate may be issued to vessels made available for inspection at a Washington coastal port that:

(i) Are properly licensed commercial crab fishing; and

(ii) Contain no Dungeness crab on board the vessel.

(8) Violation of subsection (7) of this section is a gross misdemeanor, punishable under RCW 77.15.550 (1)(a) Violation of commercial fishing area or time—Penalty.

(9) **Coastal - Barging of crab pots by undesignated vessels.** It is unlawful for a vessel not designated on a Dungeness crab coastal fish-

ery license to deploy crab pot gear except under the following conditions:

(a) The vessel deploys pot gear only during the (~~64-hour~~) 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.

(10) Violation of subsection (9) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.500 Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

**WAC 220-340-430 Commercial crab fishery—Gear 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) and (c) 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 220-340-440 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.

(c) Persons operating under a valid coastal gear transport permit as provided in WAC 220-340-440 may possess crab pots or buoys bearing the tags issued by another state, 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, except if authorized by permit issued by the director, 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 (~~(beginning March 1 and after a signed affidavit is received by an authorized department 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 lost tags according to the following schedule: March 1 through April 30, up to 10 tags.~~

~~(B) Coastal crab license holders with a 500-pot limit may replace lost tags according to the following schedule: March 1 through April 30, up to 15 tags.~~

~~(C) No replacement tags will be issued for the current season after May 1.~~

~~(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) in the case of extraordinary loss or on a case-by-case basis. Replacement buoy tags will not be issued in excess of the license holder's permanent pot limit.~~

(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, unless otherwise authorized by permit issued by the director.

(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 220-330-020.

(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, unless otherwise authorized by permit issued from the director.

(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) **Coastal commercial crab fishery line requirements.**

(a) All crab pots used in the coastal Dungeness crab fishery shall be set up to use only the amount of line reasonably necessary to compensate for tides, currents, and weather.

(b) (i) Beginning December 1, 2020, it is unlawful for a coastal Dungeness crab fishery license holder to use line that connects the

main buoy to the crab pot that is not marked sufficiently to identify it as gear used in the Washington coastal Dungeness crab fishery.

(ii) For each shellfish pot used in the Washington coastal commercial Dungeness crab fishery (~~(must be)~~) and rigged with line, that (~~is~~) line must be marked with 12 inches of red in at least two places. At a minimum, 12 inches of line must be marked in red, no more than one fathom from the main buoy and no more than one fathom from the pot.

(7) 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 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-340-450 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 closed to commercial crab fishing except as provided by emergency rule. The target date for the commercial season opening is December 1 based on the results of test fishing to determine crab condition.

(2) The department may delay opening of the coastal crab fishery due to softshell crab conditions or biotoxin levels. If the department delays a season due to softshell crab conditions or biotoxin levels, 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 or biotoxin 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 or biotoxin 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 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 20-04-066, filed 1/31/20, effective 3/2/20)

**WAC 220-340-480 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, unless authorized under a permit issued by the director. 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, through September 15, 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)) 14 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 permanent 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 assigned to a license by the department will remain in effect until such time as the appeal process is concluded.

(5) **Summer management period - Pot limits.** Beginning May 1 through September 15, it is unlawful for a person to deploy or fish more than the specified reduced pot limit assigned to each license, unless otherwise authorized by permit issued by the director. Each pot deployed during the summer management period must possess a summer buoy tag, unless authorized by permit issued by the director.

(a) Licenses with a permanent pot limit of 500 will be assigned a reduced pot limit of 330 pots.

(b) Licenses with a permanent pot limit of 300 will be assigned a reduced pot limit of 200 pots.

(c) It is unlawful to deploy gear that includes tags other than the summer buoy tag, unless authorized by permit issued by the director.

AMENDATORY SECTION (Amending WSR 20-15-049, filed 7/9/20, effective 8/9/20)

**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 September 15 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.