

**Concise Explanatory Statement (CES)  
Amending Coastal Crab and Puget Sound Shellfish Updates**

The Washington Department of Fish and Wildlife (WDFW) filed the Preproposal Statement of Inquiry (CR-101) on May 2, 2023 (WSR 23-10-081), and the Proposed Rulemaking (CR102) on July 26, 2023 (WSR 23-16-050).

**Rules amended as part of this rule making:**

WAC 220-340-420 Installation and use of electronic monitoring.  
WAC 220-340-460 Coastal commercial crab logbook - Not required with operational EM.  
WAC 220-340-430 Line marking in coastal Dungeness crab fishery.  
WAC 220-330-020; 220-340-430; 220-340-510; 220-340-520; 220-360-220 Prohibit line marks or colors required in another fishery.  
WAC 220-330-020 Crab and shrimp buoys.  
WAC 220-330-020; 220-340-430; 220-340-510; 220-340-520 Limit line in shellfish and hagfish fisheries to amount needed.  
WAC 220-330-020; 220-340-430; 220-340-520 Standardize crab and shrimp pot buoy colors.  
WAC 220-320-015 Define a new management category for non-spot shrimp species.  
WAC 220-340-430 Require annual registration of commercial crab buoy color schemes.  
WAC 220-340-430 Buoy tags in commercial Dungeness crab fisheries.  
WAC 220-340-520 Puget Sound commercial pot shrimp.  
WAC 220-320-120; 220-320-140; 220-340-455; 220-340-530 Puget Sound commercial crab and shrimp fishery boundary designations.  
WAC 220-340-030 Shellfish harvest logs.  
WAC 220-352-060; 220-352-230; 220-352-340; 220-340-420 Fish receiving, transportation ticket, and quick reporting revisions.

**Rules repealed as part of this rulemaking:**

None

**Rules created as part of this rule making:**

WAC 220-320-015 Definitions – Shellfish species complexes.

**1. Background/Summary of Project**

This Concise Explanatory Statement (CES) describes the WDFW’s reasons for adopting amended rules pertaining to the commercial shellfish regulations for fisherman operating within Washington waters, as well as responds to public comments received during the rule making process.

The proposed changes to regulations include both non-administrative and administrative amendments pertaining to the Washington coastal and Puget Sound shellfisheries. Non-administrative changes include amendments to rules regarding electronic monitoring (EM), logbook requirements, line marking requirements, and pot buoy color requirements within the coastal Dungeness crab fishery and/or Puget Sound Dungeness crab fishery. Administrative

changes include amendments to rules regarding management categories for non-spot shrimp species, buoy tags, shellfish harvest logs, electronic fish ticket reporting, and pot limit adjustments for the Coastal and/or Puget Sound shellfisheries, among others.

Rulemaking by WDFW is guided by resource management policies adopted by the Fish and Wildlife Commission (FWC or Commission) at its regularly or specially scheduled meetings that are open to the public. Those policies can be found at:

<https://wdfw.wa.gov/about/commission/policies>

In addition, WDFW's Director and staff interact with the Commission by reporting on policy implementation, and the effect of rule development and implementation, as part of the Commission's public meetings. Commission meeting agendas, and staff reports to the Commission, are available at: <https://wdfw.wa.gov/about/commission/meetings>

## **2. Reasons for adopting the rules:**

The adoption of these proposed rules will enhance fishery monitoring and clarify existing rules. Overall, these rule amendments will accomplish conservation objectives, advance achieving orderly fisheries, and improve the enforceability of current rules.

## **3. Difference between the text of the proposed rules and the text of the rules as adopted:**

### **A. WAC 220-340-420: Installation and use of electronic monitoring (EM)**

- The proposed rule language within WAC 220-340-420(12)(b)(i)(C) under the subheading "operating requirements" generated concern from fishery participants that the required hydraulic sensor would need to be installed near a fishing vessel's crab block, exposing instrument wiring to the elements. After soliciting feedback from WDFW Enforcement and commercial fisherman, we propose the following change:

"A hydraulic pressure sensor must be installed ~~between the crab block and the first fitting from the crab block on the main line~~ on the main high pressure supply line between the hydraulic pump and the crab block of a vessel that controls it such that recorded pressure readings ~~are indicative of~~ show pressure increases during pot hauling activity."

**Reason:** This change allows a vessel operator to determine a location for the sensor that complies with the guidelines established in regulation in a manner that satisfies WDFW's data and enforcement needs.

- The proposed rule language within WAC 220-340-420 (12)(b)(ii)(A) generated confusion from fishery participants as to what information would need to be provided. We propose the following change:

"(A) The following data fields must be provided to the PSMFC whenever a new system is installed, or new data transmissions begin: Vessel coast guard number, ~~state~~ WDFW vessel registration number, state of registration, serial number or unique identifier linked to the EM system, EM service provider name, name of the make and model of the EM system, date the system was installed or started transmitting data, date the system was removed or stopped transmitting data."

**Reason:** This change makes it clear to fishers what data needs to be provided to PSMFC.

- The proposed rule language within WAC 220-340-420(12)(b)(iii), (12)(b)(iii)(E) and (12)(b)(iii)(D) requires that coastal commercial Dungeness crab vessels must submit an EM activation report to WDFW and wait to receive a confirmation from WDFW that location and pressure data transmissions are being received before that vessel can participate in the fishery. During the public comment period, commercial fishers expressed concern that these requirements would prevent vessels from entering the fishery in a timely manner at the start of the season and following an EM service failure. WDFW determined that the requirement to provide fishers with confirmation that data is being received is not necessary at the start of the season, as fishers can determine if their system is operational without confirmation from WDFW. We propose eliminating this requirement by striking the following section in WAC 220-340-420(12)(b)(iii):

~~“(iii) Activate the EM system and submit an EM system activation report to WDFW, and receive confirmation from WDFW that the location and pressure sensor transmissions are being received before the vessel is used to fish in the coastal commercial Dungeness fishery.”~~

We propose eliminating the requirement for submitting an activation report only for temporary exemption permits by striking the following section in WAC 220-340-420 (12) (b)(v)(D):

~~“(E) After operating under a temporary exemption permit as described in (b)(v)(A), (B), and (C) of this subsection.”~~

We further propose amending proposed text under “EM exemption permit” in WAC 220-340-420(12)(b)(v)(D):

~~“(D) To request an exemption permit described in (b)(v) of this subsection, a vessel owner must contact WDFW. For an exemption permit to be valid, a request must be received by WDFW as soon as it is apparent that there is a system failure or emergency or at least 2 hours before a haul out exemption is needed. A vessel will be required to submit an activation report under (b)(iii) of this subsection before returning to fish.”~~

**Reason:** WDFW proposes eliminating the requirement that fishers wait to resume fishing activity until confirmation only for temporary exemption permits to limit the downtime vessels experience following an EM system failure and to assist in the mitigation of any economic impacts that result therefrom.

#### **B. WAC 220-340-460: Coastal commercial crab logbook – Not required with operational EM**

- The proposed rule changes to WAC 220-340-460 enable WDFW to collect location and crab pot hauling activity data from all coastal commercial crab fishery

participants, removing the necessity for fishers to submit commercial crab logbooks. However, in the event of an EM system failure, fishers are required to submit paper or electronic logbooks detailing their fishing activity for the duration of the EM service outage. The text of WAC 220-340-460(2)(a) was updated to increase the clarity of these rules:

“The department must receive a copy of the completed logbook sheets or electronic fields within **ten (10) days 24 hours** following any ~~((calendar month in which fishing occurred))~~ landing made by a vessel while fishing for Dungeness crab in the coastal commercial fishery without a fully operational electronic monitoring system. Completed Dungeness crab harvest ~~((logs))~~ logbooks must be ~~((sent))~~ submitted to the ~~((following address:))~~ Washington department of fish and wildlife ~~((, Attention: Coastal Dungeness Crab Manager, 48 Devonshire Rd., Montesano, WA 98563))~~ using a WDFW logbook drop box or the following electronic mail address: [coastal.crab.EM@dfw.wa.gov](mailto:coastal.crab.EM@dfw.wa.gov).

**Reason:** This proposed change increases the clarity of the rule and aligns the WAC with the logbook requirements described in the Electronic Monitoring Program Compliance Guide.

#### **C. WAC 220-352-060: Completion, submission, distribution, and retention of copies of nontreaty fish receiving tickets**

- The proposed rule changes to WAC 220-352-060 describe when and where electronic fish tickets must be submitted to the department. To improve rule clarity, the updated portion of the rule change now reads:

(3) Original receivers who are required to submit fish receiving tickets using an electronic form under WAC 220-352-035(2) must:

(a)(i) ~~((Submit the ticket within 24 hours of completion of the delivery if required to report electronically under WAC 220-352-035(2)))~~ For deliveries completed on a mobile device, original receivers are required to fill out an electronic fish ticket form at the delivery location and submit it immediately following the completion of the delivery of fish or shellfish to the original receiver before leaving the delivery location.

**Reason:** The proposed change to this rule removes a duplicative reference and increases rule clarity.

#### **4. Summary of comments and WDFW response and consideration of the comments:**

A letter announcing a public meeting to discuss the proposed rules, held August 17<sup>th</sup>, 2023, at WDFW’s Montesano office, was mailed August 4<sup>th</sup>, 2023, to coastal Dungeness crab license holders, operators, alternate operators and Advisory Board members. A letter describing the rule change proposals and guidance on how to submit public comment was mailed August 17<sup>th</sup>, 2023, to coastal Dungeness crab, Puget Sound crab, and hagfish license holders and to all shellfish dealers. Comments were received from license holders/operators via telephone calls and from fishery members in attendance at the August meeting. Included in the sections below are a summary of the comments received as well as WDFW’s response.

#### **A. Placement of the hydraulic sensor**

Concern: After mailing the August 4<sup>th</sup>, 2023, notice, multiple fishers expressed concern for the proposed location of the hydraulic pressure sensor.

Response: WDFW staff met with WDFW enforcement and consulted with fishers to determine a solution. This resulted in the proposed change in “operating requirements” in WAC 220-340-420(12)(b)(i)(C) detailed in section 3 of this document. WDFW staff also addressed this change in the Electronic Monitoring Program Compliance Guide.

#### **B. Battery draw of an ‘always on’ EM device**

Concern: Fishers in ports without access to power at their mooring stations expressed concern that an EM system would drain a vessel’s battery below the acceptable start range between fishing trips.

Response: WDFW staff compiled information on the battery draw of the system and compared it to different batteries used in the fishery. The battery with the least amount of amp hours was determined to take 23 days to draw the vessel battery below the acceptable start range and a standard marine deep cycle battery would take 134 days to draw the vessel battery below the acceptable start range. Given the average time between trips for vessels in ports without dock power was 3.1 days, it was determined that a vessel not having shore power would not present a problem relative to meeting the requirement to supply continuous power to the EM system.

#### **C. Supply chain issues with EM procurement**

Concern: Fishers were concerned about supply chain issues preventing procurement of EM systems and a lack of technicians to install and service EM systems.

Response: WDFW staff have worked with Pacific Sates Marine Fisheries Commission to secure funding to purchase enough Archipelago FishVue LIME systems to provide one to every vessel designated on a 2024 coastal crab license. WDFW staff have worked with Archipelago to identify and train local contracted electricians in the installation and servicing of the systems. Archipelago also has two technicians on staff that are available to service the WA crab fleet. WDFW is working with Archipelago to establish dedicated days before the 2023-24 crab season opener where staff will be available in coastal crab ports to answer questions and help with installations. Technicians will also be available after initial installations are complete to address servicing needs during the crab season.

#### **D. Use of EM data to identify fishery participation**

Concern: Fishers expressed concern that data collected by an EM system could not be used to determine whether a vessel is participating in the coastal Dungeness crab fishery or another fishery for which they are licensed.

Response: The proposed rule changes require that vessels participating in the WA commercial coastal Dungeness crab fishery must have a working EM system that continuously provides data to managers. While a vessel may participate in multiple fisheries, they are not permitted to participate in multiple fisheries in a single trip. Each trip where a vessel participates in the coastal crab fishery generates a fish receiving ticket when crab are landed at a port. Therefore, it is possible for WDFW staff to distinguish a

vessel's coastal crab fishing activity from participation in other fisheries by ascertaining a vessel's fishing trips from EM data and matching them to a fish receiving ticket.

The following concerns were raised at the August 17<sup>th</sup>, 2023, meeting and from public comment received at the September 29<sup>th</sup>, 2023, WDFW Commission meeting:

#### **E. Exemption permit availability**

Concern: Fishers expressed concern with only being able to apply for an exemption permit or exemption extension through an online format when outside of normal business hours.

Response: WDFW staff recognized this could be a potential issue for some fishers and amended the Electronic Monitoring Program Compliance Guide to allow fishers to request exemption permits and extensions via text and email when outside of normal business hours.

#### **F. Impact of filing an activation report on fishing opportunity**

Concern: Fishers expressed concern that requiring an activation report after receiving an exemption permit could delay the vessel from resuming participating in the fishery.

Response: WDFW staff recognized this potential delay and after consulting with Archipelago staff determined that vessel operators will have access to an application to determine the system is operational and potential confirmation from the technician servicing the system. Therefore, WDFW staff propose removing the text under "Activation Reports" in WAC 220-340-420(12)(b)(iii)(E) and "EM exemption permit" in WAC 220-340-420(12)(b)(v)(D) as described in section 3 of this document. WDFW staff also addressed this change in the Electronic Monitoring Program Compliance Guide.

#### **G. Enforcement discretion during EM system requirements 'roll out' period**

Concern: Fishers expressed concern with strict enforcement of the proposed rules during the first season of their implementation.

Response: WDFW staff and enforcement recognize this is a substantial change for the coastal crab fishery. WDFW enforcement has focused on education in the past for significant changes in the fishery and has used discretion in enforcing new regulations. WDFW staff have committed to providing information in multiple formats on how to comply with the new regulations, including the Electronic Monitoring Program Compliance Guide. WDFW staff are also aware there may be unforeseen issues outside of the fisher's control that could lead to EM system failures and have provided an exemption permit process.

#### **H. Length of time granted from an exemption permit**

Concern: Fishers were concerned that a 3-day exemption permit would not allow enough time to service the EM system.

Response: WDFW staff addressed this concern in the Electronic Monitoring Program Compliance Guide, by lengthening the exemption permit to 4 days and allowing fishers to request exemption permit extensions by text and email.

**I. Requirement to submit coastal commercial crab logbook**

Concern: During a follow up call with a coastal crab fishery representative after the September 29<sup>th</sup>, 2023, WDFW Commission meeting it was brought to WDFW staff attention that there was a discrepancy between the proposed WAC changes and the compliance guide.

Response: This resulted in the proposed change to WAC 220-340-460(2)(a) detailed in section 3 of this document.

A substantial number of the proposed rule changes were housekeeping in nature and were not commented on.