

Concise Explanatory Statement Commercial Dungeness Crab Rules

Rules amended as part of this rulemaking:

WAC 220-340-430 Commercial crab fishery – Gear requirements.

Rules repealed as part of this rulemaking:

None

Rules created as part of this rulemaking:

None

1. Background/Summary of Project:

This Concise Explanatory Statement (CES) describes the WDFW's reasons for amending **WAC 220-340-430 Commercial crab fishery – Gear Requirements** and responds to public comments received during the rule making process.

Changes to regulations included both administrative and substantive amendments pertaining to the Washington coastal and Puget Sound Dungeness crab fisheries. Administrative changes were proposed to improve accountability and enforceability by: (1) shifting responsibility for compliance with gear requirements to the vessel operator designated on the crab license; (2) clarifying buoy brand registration requirements, and (3) improving clarity by revising language to affirmatively describe compliance obligations.

One substantive change affected both the coastal and Puget Sound fisheries. The substantive change disallows gear marking required in another non-treaty fishery (Gear Marking Prohibitions). All other substantive changes impacted only the coastal fishery and were implemented to improve traceability of fishing gear and further reduce whale entanglement risk. Comprehensive line marking enhances the ability to identify entangled gear, addressing a major data gap. Currently, 50% of whale entanglements along the West Coast cannot be traced to a specific fishery due to insufficient identifying information. Closing this gap will help assess the extent of entanglements involving Washington's coastal gear and guide effective risk-reduction measures. Surface gear limitations, including line length and the number of buoys, will minimize entanglement risks.

The Commission's newly adopted [Coastal Dungeness Crab Policy](#) includes the directive to provide for the economic viability of the coastal Dungeness crab resource, while also implementing measures consistent with addressing entanglement risks to marine life pursuant to the ESA and the MMPA and to achieve and maintain federal coverage for ESA listed marine mammal impacts in the coastal fishery. Consistent with this policy, implementation of the rule amendments improves the traceability of entangled coastal crab gear.

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 rule:

Implementation of the rule will enhance gear traceability, reduce entanglement risks, and support regulatory compliance with federal conservation mandates. The phased implementation and cost-mitigation strategies aim to minimize financial burdens on small businesses while ensuring the long-term viability of the fishery.

3. Differences between the text of the proposed rule and the rule as adopted:

Department staff recommended the following adjustments to the proposed rule from the text published with the CR-102 based on public comments:

- A. Adjustment:** The proposed rule language within Section (7) Coastal commercial Dungeness crab fishery surface gear limitations was amended to include a new provision wherein WDFW may issue a permit under the Director's authority to exempt a vessel from the surface gear length limitation for a demonstrated safety concern. The exemption permit language in subsection (7)(d):

"Vessel operators and alternate operators, as outlined in RCW 77.65.130, may request a surface gear length exemption permit from the department prior to the commencement of fishing for a demonstrated safety risk. An exemption is only authorized for the period specified on the permit, for the surface gear length specified on the permit, and the fishing area and depth specified on the permit. Requests for exemption permits will be evaluated by the department on a case-by-case basis and granted at the department's discretion. 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."

Rationale: The original proposed change limited all surface gear to a total length of 36 feet and public comment from fishery participants indicated that for some larger vessels shortening the length of their surface gear to comply would create a safety risk for the crew. The exemption permit creates a mechanism for the department to issue a permit allowing a greater length of surface gear to accommodate the needs of larger vessels.

- B. Adjustment:** Proposed changes that shifted the responsibility of gear requirements from the licenses holder to the vessel owner were updated to reference the specific RCW that defines an operator to improve clarity. The terms, “designated operator”, “vessel operator”, and “license holder” in sections (5)(d), (5)(d)(ii), (5)(d)(iii), (5)(d)(iv), (5)(v), (6)(a), (6)(b), and (6)(c) were updated to: “operator, or alternate operator, as outlined in RCW 77.65.130”.

Rationale: This change clarifies the meaning of these terms through reference to the legal definition and improves rule structure by using consistent terminology throughout WAC 220-340-430 when referencing the individual responsible for gear requirements.

- C. Adjustment:** In subsection (6)(b), WDFW removed the term “commercial” as a qualifier, thereby applying the prohibition on the use of line marking required by regulation to all West Coast fisheries, not just commercial fisheries, if such marking is mandated.

Rationale: The addition of commercial as a qualifier was unnecessarily limiting and therefore it was removed to improve clarity.

- D. Adjustment:** Initial changes to subsection (5) Commercial crab fishery buoy requirements continued to reference requirements for buoy color registration requirements using both the terms “color combinations” and “buoy color scheme,” although the intended meaning is the same. To ensure consistency and clarity, references to “buoy color combinations” in subsections (5)(d), (5)(d)(iii), and (5)(v) were modified to “buoy color scheme”.

Rationale: These changes improved rule structure and clarity by using consistent terminology throughout WAC 220-340-430 when referencing buoy color scheme requirements.

- E. Adjustment:** The change in subsection (6)(c)(ii)(A) clarifies the continuation of the current 12-inch red mark on the line connecting the main buoy to the shellfish. The phrase “Effective immediately” has been removed as it is unnecessary. Additionally, the word “also” was added to the sentence describing that manufactured line may satisfy this marking requirement.

Rationale: This change removed the unnecessary effective time for the rule that becomes effective upon adoption of the proposed rule and added “also” to improve clarity.

- F. Adjustment:** The proposed rule language in subsection (6)(c)(ii)(B) detailing the surface line marking requirements effective December 1, 2025 was modified by moving the language “exempt the buoy gangion lines” to the end of the sentence.

Rationale: During the public comment period, it was noted that placing the exemption language in the middle of the sentence could cause confusion. To improve readability and clarity the exemption language was relocated to the end of the sentence.

4. Public comments, response to comments, and consideration of comments

Public comment under the CR 102 process was open from January 23, 2025 to March 24, 2025 during which the department received 16 comments. The public hearing was held on March 21, 2025 during which the department received five comments. Public comments were categorized into three main themes: line marking, surface gear limitations, and other.

A. Line marking

- 1) **Comment:** The cost of marking line is much greater than the estimates provided by the department in the SBEIS.

Response: The cost estimates provided in the SBEIS represent the expense of purchasing manufactured line or paint to cover only the amount of line required by the proposed WAC. The department acknowledges that actual costs may be higher for individual operations depending on their fishing practices. However, the goal of the SBEIS was to evaluate the costs to be in compliance and to present a realistic estimate of the minimum expected cost.

- 2) **Comment:** Painting marks will require significant work, and the painted marks will fade and have to be redone.

Response: The department recognizes that painted marks will fade over time; therefore, the rule requires that marks must be regularly serviced and maintained in a condition that allows them to be readily identified as conforming to the required marking scheme. The purpose of allowing a solid paint marking option is to provide a lower-cost alternative to manufactured, state-fishery specific line, enabling industry to continue to use fishing line that remains in good working condition and reduce unnecessary waste associated with replacing of functional line with newly manufactured line.

- 3) **Comment:** Request to allow an alternative method of marking by tucking a black strand of the same type of line.

Response: The department acknowledges that some members of the fishing fleet have used this strategy to comply with the current requirement for 12-continuous inches of red marking. However, a mark that does not fully encircle the line does not meet marking needs moving forward. One purpose of expanding the line marking requirements was to improve the visibility marks when entangled gear is observed or photographed but not retrieved.

- 4) **Comment:** Marking the trailer (surface) line and the top shot (vertical line) the same way is suboptimal.

Response: The department understands that it is common practice for crabbers to use different colors or markings to indicate line length and function within their gear setup. The regulations allow the use of a tracer line as a tool to differentiate between line types and does not prohibit other

small markings on the line, provided they are used solely to distinguish between lines that otherwise appear identical.

- 5) **Comment:** All vertical line should be marked with manufactured line and the use of alternative marking should not be allowed.

Response: The department recognizes the importance of line marking for the identification of gear on entangled marine animals. However, the rule seeks to balance the need for effective line marking with the high costs and additional workload that these requirements impose on industry.

- 6) **Comment:** All line marking should be required immediately.

Response: Phased implementation of the line marking requirements is necessary to mitigate the high costs imposed on industry, consistent with WDFW's obligations under RCW 19.85.011, SBEIS. The phased approach also accommodates manufacturing constraints associated with meeting the increased demand for marked line.

- 7) **Comment:** Recognition of the need for line marking and reluctant acceptance of the proposed rule.

Response: The department appreciates industry members' understanding the need for line marking.

- 8) **Comment:** The new line marking rules will do nothing for entanglements as it will not remove crab lines from the water.

Response: The department recognizes that line marking does not directly reduce entanglement risk, however each year approximately half of the gear on entangled animals can not be identified to a fishery. Line marking is a key component of monitoring the fishery for interactions with large whales and sea turtles.

- 9) **Comment:** Delay the line marking requirement for the top 15 fathoms of main line until sinking line is available in the state-fishery specific manufactured color scheme.

Response: Sinking line is available in the state-fishery specific color scheme from Everson Cordage Works.

B. Surface gear limitations

- 1) **Comment:** The surface gear length limitation of 36 feet is a safety risk for large vessels.

Response: The department recognizes the safety concern related to gear length limitations for some large vessels. In response to these concerns, the adopted WAC includes a provision allowing an exemption by permit, from the gear length limitations, where a demonstrated safety risk exists.

- 2) **Comment:** The proposed rule as written does not actually limit the amount of line on the surface because the line used to connect the pot to the main buoy can float on the surface.

Response: The department recognizes that excess vertical line connecting the main buoy to the crab pot may float to the surface. Nevertheless, the primary goal of this regulation is to limit the length of the trailer line and the number of trailer buoys allowed. Additionally, WAC 220-340-430 already requires that vertical lines remain taut, limiting the amount of vertical line used to what is necessary to accommodate tides and currents.

- 3) **Comment:** Thirty-six feet is a very short surface gear limit.

Response: The department has included a provision allowing for an exemption to the length limit where there is a demonstrated safety concern, in recognition that the adopted surface gear length limit will require some fishers to modify and shorten their trailer line, .

C. Other

The department received a number of comments that were not directly related to the rule making action.

- 1) **Comment:** The Fish and Wildlife Commission should adopt a goal of zero deaths of endangered species and marine mammals in Washingtons fisheries.

Response (1): This comment is beyond the scope of the proposal. The adopted rules are being implemented to meet monitoring and minimization objectives pursuant to seeking an Incidental Take Permit under the Endangered Species Act.

- 2) **Comment:** It is paramount to recognize the need and provide updated population data for whale stocks and populations off the Pacific Coast and Washington as these populations have grown considerably.
- 3) **Comment:** The population composition of humpback whales off the Washington coast is different from California and Oregon.

Response (2-3): The department appreciates comments highlighting the complexity of whale population distributions and their status off Washington and will consider the best available science in ongoing fishery whale risk reduction actions.

- 4) **Comment:** Density of crab pots needs to be regulated to reduce entanglements.
- 5) **Comment:** Using pop-up gear in Washington, especially during storm events, is problematic at best and longlining crab pot gear is a safety risk

Response (4-5): The department appreciates the comments, but these are beyond the scope of the proposal.

- 6) **Comment:** The agency should adopt additional entanglement risk reduction management measures, specifically: establish emergency closure procedures, start summer pot reduction on April 15, restrict fishing depths to less than 28 fathoms after April 15, increase the pot

reduction in the summer, and evaluate management measures to protect Pacific Coast Feeding Group gray whales.

7) **Comment:** Request that the F&W commission begin testing pop-up fishing gear as soon as possible.

8) **Comment:** The one and only solution to whale entanglements is longlining crab pots

Response (6-8): The department appreciates the suggestions for additional entanglement risk reduction actions, but these are beyond the scope of the proposal.

9) **Comment:** Are whale entanglement locations added to the WDFW GIS mapping site?

Response (9): The department does not include the locations of observed entanglements on the WDFW GIS mapping site, but information on whale entanglement locations are shared by NOAA fisheries in their annual entanglement summaries which can be found on the West Coast Large Whale Entanglement Response Program webpage, <https://www.fisheries.noaa.gov/west-coast/marine-mammal-protection/west-coast-large-whale-entanglement-response-program>.