

Coastal Dungeness Crab Whale Entanglement (Briefing/Public Comment)

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Summary Sheet

Meeting dates:	October 18, 2019 – Meeting
Agenda item:	Whale Entanglements in the Coastal Crab Fishery – Briefing and Public Comment
Presenter(s):	Michele Culver and Heather Hall, Intergovernmental Ocean Policy

Background summary:

In January, we briefed the Commission on the status of gray whale and humpback whale entanglements in the coastal Dungeness crab fishery, and updated the Commission in May. As part of those briefings, we indicated that:

- There has been a relative increase in whale entanglements West Coast-wide, each year in 2015-2018, compared to the average number confirmed in 2000-2014,
- These included humpback whale entanglements in the coastal crab fishery, some of which are listed under the Endangered Species Act (ESA),
- WDFW had sent a letter to NOAA indicating our intent to apply for an incidental take permit under ESA Section 10 for the coastal crab fishery,
- WDFW had been contacted by the Center for Biological Diversity who had filed a lawsuit against the California Department of Fish and Wildlife regarding interactions with ESA-listed species in California fisheries, and
- WDFW held two workshops this spring with coastal crab fishery participants to identify potential regulatory changes to reduce whale entanglements.

The purpose of this agenda item is to provide updates relative to the status of recent large whale entanglements and the incidental take permit process, and to brief the Commission on proposed rules intended to reduce the risk of whale entanglements in the coastal crab fishery.

Attached, for reference, are:

1. Summary of the discussions and actions that have occurred in 2019,
2. WDFW letter dated October 2, 2019, to coastal Dungeness crab license holders describing the purpose and intent of the proposed rule changes, and
3. WDFW proposed rule changes for the coastal crab fishery.

Staff recommendation:

Consider the information presented, including public comment, and provide feedback and guidance to staff, as appropriate.

Policy issue(s) and expected outcome:

The coastal Dungeness crab fishery has had interactions with gray whales and humpback whales, which have increased in recent years, and two of the ESA-listed distinct population segments of humpback whales frequent the Washington coast in areas that overlap with the crab fishery.

WDFW staff are working with the coastal crab fishery participants and other interested stakeholders to develop and consider regulatory changes to reduce the likelihood of whale entanglements in the crab fishery.

We will try our best to meet our target date of December 31, 2020, for submittal of an incidental take permit application to NOAA. We are collaborating with NOAA, coordinating with the states of Oregon and California, and keeping the Coastal Treaty Tribes informed of our efforts.

Fiscal impacts of agency implementation:

The Fish Program has hired a biologist to add support for the incidental take permit process, which includes drafting the permit application and accompanying Habitat Conservation Plan and National Environmental Policy Act documents, as required. Current policy staff work has been re-prioritized to focus on this effort over the next two to three years for coordination with NOAA, states of Oregon and California, affected crab industry members, and other stakeholders.

Public involvement process used and what you learned:

A summary of the discussions to date is provided in Attachment 1.

Action requested and/or proposed next steps:

No action is being requested of the Commission at this time. WDFW staff are having a public hearing on the proposed rule changes on November 6, 2019, in Montesano, and public comment is open until that time.

WDFW staff will brief the Commission on the public comment received and any recommended revisions to the proposed rule changes at the January 16-18, 2020, meeting, which is when the Commission is scheduled to take final action.

Draft motion language:

N/A

Form revised 2-15-18

Summary of Dungeness Crab Discussions and Actions in 2019

March 19 – 1st WDFW Workshop with crab industry (low attendance):

- Information on whale entanglements in WA crab fishery, ITP process, and timeline
- Briefing on electronic monitoring (EM) options
- Review potential regulatory alternatives (gear requirements, time/area closures, derelict gear removal, and EM)

March 26 – Center for Biological Diversity (CBD) and Pacific Coast Federation of Fishermen’s Associations (PCFFA) settlement agreement with CDFW:

- Closed crab fishery on April 15, 2019
- Next season opens Nov 15, 2019—anticipate CDFW regulations prior to opening
- Closes fishery on April 1 each year (in specific areas) until ITP permit is issued
 - Allows “ropeless gear” in other areas until ITP permit is issued
- Requires CDFW submit ITP permit application by May 15, 2020
- Requires Risk Assessment and Management Program (RAMP) to determine closures
- “Working Group” to include CBD and PCFFA with scheduled calls with Director
- Commits NOAA to aerial surveys and whale presence criteria to determine closure

April 17 – Conference call with NMFS Protected Resources Division:

- Discussed CBD/CDFW settlement agreement and WA Whale Working Group process
- Need for close collaboration – consider scope of ITP application and timing
- Recommend USFWS HCP training (Aug 12-16 in WV)

April 17 – Meeting with Marine Mammal Scientists (Cascadia Research), NOAA Whale Response Lead (Doug Sandilands), and Steve Jeffries

April 23 – WDFW submitted preproposal for NOAA FIS grant for EM pilot program (\$823K):

- 50-60 vessels (potential requirement for northern area)
- Contract services with Ecotrust Canada – RFID tags, camera, VMS, electronic logbook
- WDFW Scientific Technician 4 to review video and audit logbook
- Note: In October, we received notice that we did not get the NOAA FIS grant, but were encouraged to apply again in 2020 with a reduced scope (number of vessels and costs).

April 24 – 2nd Workshop with crab industry (high attendance):

- Solicited feedback on potential regulations and proposed process and timeline
- Narrowed alternatives for gear requirements, derelict gear removal, and EM and discussed timing relative to fishery operations

May 1 – Conference call with CBD – asked WDFW to:

- Commit to submitting ITP application to NMFS by specific date
 - Indicated “target” submittal of Dec 31, 2020 (best case scenario) – “reasonable”
- Commit to CBD to implement specific regulations
 - FWC rulemaking process, which includes public comment – “understand”
- Consider regulations for 2019 season
 - Director could consider e-reg for pot limit reduction for summer fishery

May 23 – Coastal Crab Advisory Board meeting

- Reviewed results of industry workshops and discussed proposed rule changes and the proposed process and timeline for implementation during the 2019-2020 season

July 1 – Effective date of emergency rule for reduced pot limit:

- License holders with an assigned pot limit of 500 pots were reduced to 330 pots
- License holders with an assigned pot limit of 300 pots were reduced to 200 pots
- This rule was in effect through the end of the season (Sept 15, 2019)

July 29-August 1 – NOAA ESA Training for West Coast states to Address Whale Entanglements in the Coastal Crab Fisheries

September 6 – Coastal Crab Advisory Board meeting

- Reviewed and discussed proposed rule changes and the proposed process and timeline for implementation during the 2019-2020 season

September 30 – Coastal Crab Industry meeting (high attendance)

- Reviewed and discussed proposed rule changes, including the purpose and intent, opportunities for public comment, and the proposed process and timeline for implementation during the 2019-2020 season



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

Mailing Address: P.O. Box 43200, Olympia, WA 98504-3200 • (360) 902-2200 • TDD (360) 902-2207
Main Office Location: Natural Resources Building, 1111 Washington Street SE, Olympia, WA

October 2, 2019

Dear Coastal Commercial Dungeness Crab License Owner:

The purpose of this letter is to provide you with information regarding proposed changes to regulations affecting Washington's coastal commercial Dungeness crab fishery.

The National Marine Fisheries Service (NMFS) has confirmed increases in large whale entanglements along the West Coast in recent years. These include increases in humpback whale entanglements in the coastal Dungeness crab fishery, some of which are listed under the Endangered Species Act (ESA). In response, the Washington Department of Fish and Wildlife (WDFW) held a couple of industry workshops to identify and develop proposed revisions to coastal commercial Dungeness crab regulations designed to reduce the risk of whale entanglements in Dungeness crab gear. The proposed changes are summarized below. A copy of the CR-102 and the proposed regulatory language is available on the WDFW webpage under the Rules Information Center here: <https://wdfw.wa.gov/about/regulations/development#19-10-059>

Please note that some of these changes would be implemented from the effective date of the final rule (estimated to be around mid-February), and would remain in place year-round after that. Other changes are seasonal and have specific annual start dates to reduce the amount of crab gear in the water during the time when humpback whales are more common off the Washington coast, and for ease of implementation during this first year. For each proposed change, we have indicated our proposed effective dates.

Require only the amount of line necessary (required beginning effective date of the rule, and remain in place year-round after that). Slack line at the surface can increase the risk of entangling whales and this proposed rule change would implement that best practices recommendation through regulation. Washington coastal Dungeness crab industry members, and others, as part of the Washington Whale Entanglement Working Group, developed the "Best Practices Guidelines" that outline some practical ways to reduce the risk of entangling whales. One of those guidelines recommends using only the amount of line necessary to compensate for tides, currents and weather. Given the extreme fishing conditions off the Washington coast, including strong tides and currents, and seasonal variability, specifying the exact amount of line allowed would be challenging if not dangerous. This proposed rule change would simply implement this "Best Practice" recommendation through regulation.

Require line marking specific for Washington (WDFW will recommend an effective date of May 1, 2020, to remain in place year-round after that). Data collected by the National Ocean and Atmospheric Administration's (NOAA) whale entanglement responders show that

approximately half of the confirmed entanglements cannot be attributed to a specific fishery or state because the buoy or pot is missing or the buoy tag is not sufficiently visible. This makes it difficult to assess whether regulatory changes are effective, identify additional tools to reduce the risk of entanglements, and monitor compliance with state-specific incidental take permits. This proposed rule change would require that line be marked with red in at least two places – at the top near the buoy and at the bottom near the pot – to identify it as gear from the Washington coastal commercial Dungeness crab fishery. WDFW is coordinating the line-marking requirement with the states of Oregon and California to ensure it is unique to Washington, which will help NOAA, and WDFW assess the effectiveness of our management tools.

WDFW staff will recommend an effective date of May 1, 2020, to the Fish and Wildlife Commission. We believe that this will provide notice to license owners and operators in time to modify their gear pre-season if they intend to fish after May 1 this season. For others who do not intend to fish after May 1 this season, this delay provides certainty relative to their gear being in compliance prior to May 1.

Reduced pot limit and summer buoy tag (required annually from May 1 of each year, beginning May 1, 2020). The intent of this rule change is to reduce the risk of whales becoming entangled in commercial crab gear by reducing the number of lines in the water during the peak time when humpback whales are abundant off the Washington coast. The rule changes include a pot limit reduction coupled with a new buoy tag requirement to ensure compliance with the reduced pot limit. Beginning May 1, license owners with a permanent 500- pot limit would be allowed to use 330 pots and license owners with a 300-pot limit would be allowed to use 200 pots. Currently, license owners are issued buoy tags at the start of the season and untagged gear is unlawful. License owners who want to continue to fish after May 1 will need to purchase summer buoy tags, which will be different from the winter buoy tag, and deploying gear that has tags other than the summer buoy tag will be unlawful.

Replacement buoy tags (effective annually from May 1 each year). This rule change will remove the second period for replacement tags, which will not be needed with the new requirement for summer buoy tags in place beginning May 1. Replacement buoy tags would be available for all coastal commercial crab license holders March 1 through April 30. During this period, license holders with a 500-pot limit may replace up to 15 tags, and license holders with a 300-pot limit may replace up to 10 tags. No replacement tags would be issued after May 1.

The Commission will be briefed on the proposed rule changes at their October 18, 2019 meeting at the Natural Resources Building in Olympia. Public comment will be taken as part of the October Commission meeting and at a public hearing November 6, 2019 at the Montesano City Hall. More information on the November 6 public hearing will be provided in a subsequent notice. Interested parties can also provide public comment through November 6, 2019 by email to Heather Hall at Heather.Hall@dfw.wa.gov or, by mail to Post Office Box 43152 Olympia, WA 98501. Scheduled times and the agenda are subject to change. Revisions, updates, and additional information are posted on the Commission web page:

<http://wdfw.wa.gov/commission/meetings.html>. Contact the Commission office with questions and to identify special accommodation needs at (360) 902-226, TDD (360) 902-2207.

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If you have any questions about this notice please contact me at 360-902-2487 or Heather.Hall@dfw.wa.gov

Sincerely,

A handwritten signature in black ink that reads "Heather Hall". The signature is written in a cursive style with a large, looping initial 'H'.

Heather Hall
Intergovernmental Ocean Policy Coordinator

cc: Michele Culver, Dan Chadwick, Dan Ayres, Victoria Knorr



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 17, 2019

TIME: 10:44 AM

WSR 19-19-075

Agency: Department of Fish and Wildlife

Original Notice

Supplemental Notice to WSR

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 19-10-059 ; 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) WAC 220-340-430 Commercial crab fishery – Gear requirements, WAC 220-340-435 Commercial crab fishery – Shellfish pot requirements, WAC 220-340-480 Commercial crab fishery – Gear limits – Coastal, WAC 220-340-490 Commercial crab fishery – Coastal gear recovery permits.

Hearing location(s):

Date: Time: Location: (be specific) Comment:

November 6, 2019	9:00 a.m.	Montesano City Hall 112 North Main Street Montesano, WA 98563	
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Date of intended adoption: on or after January 3, 2020 (Note: This is NOT the effective date)

Submit written comments to:

Name: Heather Hall
Address: Post Office Box 43200
Olympia WA
Email: Heather.Hall@dfw.wa.gov
Fax:
Other:
By (date) _____

Assistance for persons with disabilities:

Contact Dolores Noyes
Phone: 360-902-2349
Fax:
TTY:
Email: [REDACTED] wa gov
Other:
By (date) _____

Purpose of the proposal and its anticipated effects, including any changes in existing rules: These proposed rule changes would 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.

Changes would require crab line that connects a crab pot to the buoy at the surface be marked in manner that makes it identifiable and the amount of line used be only that which is necessary to compensate for tides, currents and weather. In addition, permanent pot limits would be reduced beginning May 1 through the end of the season on September 15th and the amount of replacement tags would be reduced. A summery buoy tag would be required beginning May 1 which would distinguish it from crab gear that is allowed prior to May 1. Derelict gear recovery would be allowed beginning June 1 for all crab gear that does not possess a summer buoy tag.

Reasons supporting proposal: Large whale entanglements have increased along the west coast in recent years; these proposed changes are intended to reduce the risk that Washington coastal commercial Dungeness crab gear becomes entangled with whales. Whale disentanglement responders have recommended that reducing the amount of slack line at the surface may reduce the risk that whales will become entangled in excess line. One of the larger data gaps in understanding whale entanglements is not being able to identify gear entangled on a whale, line marking requirements will improve the information collected and help disentanglement teams and fishery managers understand whale entanglements better.

A reduced pot limit from May 1 through September 15th will reduce the amount of gear in the water by at least one-third during the time that whales are more common off the Washington coast. Requiring a different buoy tag during the summer compared to the one used during the winter will allow derelict gear recovery to begin earlier when conditions are more favorable and will reduce the amount of lost or abandoned gear in the water. With the new requirements for a reduced pot limit and summer buoy tags, the period where replacement tags are available will be shortened reducing the need for additional replacement tags.

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) Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Heather Hall	1111 Washington St. SE, Olympia, WA	360-902-2487
Implementation:	Dan Ayres	48 Devonshire Road, Montesano, WA	360-249-1209
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:

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:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

RCW 34.05.310 (4)(g)
((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. A more-than-minor-cost "means a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater." (RCW 19.85.020(2)).

New costs to all license owners that participate in the coastal crab fishery could result from the requirement to mark the line that goes from the pot to the buoy and the cost of buoy tags for the summer fishery.

The proposed rule does not specify how the line must be marked other than the location and the color of marking. The proposed rule language is purposely broad to allow license owners to be innovative and find ways to minimize the cost of marking line. Input from participants on the Coastal Dungeness Crab Advisory Board suggest that the cost of line marking would be negligible.

Only license owners that chose to fish from May through September 15th would incur the new cost of purchasing summer buoy tags. Historical data shows that participation in the Dungeness crab fishery drops off beginning in April as the majority of the crab resource has been harvested and participants move on to other fisheries that contribute to their business portfolio. Initial cost estimates based on recent year's ex-vessel revenues (2013-14 through 2017-18) suggest that the cost of summer buoy tags would not reach the minor cost threshold. Three tenths of one percent of the past five-year's average ex-vessel revenue (per vessel) from the Dungeness crab fishery ranges from approximately \$570 to \$820. The cost of summer buoy tags under the reduced pot limits of 200 and 330, at the current cost of \$1.25 per tag, would be \$250 and \$412.50 for the 200 and 330 pot limits respectively, below the lowest minor cost threshold.

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:

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

Name: Heather Hall

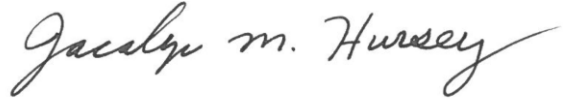
Address: 1111 Washington St. SE, Olympia, WA
Phone: 360-902-2487
Fax: 360-902-2943
TTY:
Email:
Other:

Date: September 17, 2019

Name: Jacalyn M Hursey

Title: Rules Coordinator

Signature:

A handwritten signature in cursive script that reads "Jacalyn m. Hursey". The signature is written in black ink and is positioned to the right of the "Signature:" label.

WAC 220-340-430 Commercial crab fishery—(~~Buoy tag, pot tag, and buoy~~) 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(~~(7)~~) 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(~~(7)~~) 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 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: ~~((I) Period 1)~~ March 1 through April 30, up to 10 tags.

~~((II) Period 2, 5 additional tags with no more than 15 tags total issued through the end of Period 2.)~~

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

~~((II) Period 2, 10 additional tags with no more than 25 tags total issued through the end of Period 2.~~

~~(C) Replacement tag periods are defined as follows:~~

~~(I) Period 1: March 1 through April 30.~~

~~(II) Period 2: May 1 through June 30.)~~ (C) No replacement tags will be issued for the current season after ~~(July)~~ 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.

(4) A violation of subsection (3) of this section is a gross misdemeanor, punishable under RCW 77.15.520 ~~((7))~~ 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.

(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.

(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 necessary to compensate for tides, currents, and weather.

(b)(i) 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) Each shellfish pot used in the Washington coastal commercial Dungeness crab fishery must be rigged with line that is marked with 18 inches of red in at least two places. At a minimum, 18 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((7)) Commercial fishing—Unlawful gear or methods—Penalty.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-340-435 Commercial crab fishery—Shellfish pot requirements. (1) **Commercial gear limited to pots ((and ring nets)).** It is unlawful to take or fish for crab for commercial purposes except with shellfish pots ((and ring nets)).

(2) **Commercial gear escape rings and ports defined.** It is unlawful to use or operate any shellfish pot gear in the commercial Dungeness crab fishery unless the gear meets the following requirements:

(a) Pot gear must have 2 or more escape rings or ports;

(b) Escape rings or ports must be 4-1/4 inches inside diameter or larger; and

(c) Escape rings or ports must be located in the upper half of the trap.

(3) **Maximum size for commercial crab pots.** It is unlawful to use a crab pot greater than 13 cubic feet in volume to fish for or take Dungeness crab from state or offshore waters for commercial purposes.

(4) **Groundline gear is unlawful.** It is unlawful to attach or connect a crab pot or ring net to another crab pot or ring net by a common groundline or any other means that connects crab pots together.

(5) **Penalty.** Violation of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty, or RCW 77.15.522 Unlawful use of shellfish gear for commercial purposes—Penalty, whichever is applicable depending on the circumstances of the violation.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

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((7)) 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. A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.520((7)) 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((7)) 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((7)) 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 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((7)) 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. Each pot deployed during the summer management period must possess a summer buoy tag.

(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.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

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 close of the primary coastal commercial crab season, 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.