

Coastal Recreational Dungeness Crab - (Decision)

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Summary Sheet

Meeting dates: October 15, 2018

Agenda item: Coastal Recreational Dungeness Crab

Presenter(s): Heather Reed, Intergovernmental Ocean Policy Coordinator

Background summary:

Changes to WAC 220-330-040 would revise the date when recreational anglers can use crab pot gear in coastal Marine Areas 1 through 3 and Marine Area 4 west of the Bonilla-Tatoosh so that recreational pot gear is allowed beginning November 15, rather than December 1. Currently, the recreational crab fishery with pot gear opens in coastal areas on the same day that the commercial fishery is scheduled to open. However, the commercial fishery is allowed to put pots in the water on November 28, 73-hours prior to opening. Allowing the recreational crab pot fishery to open two weeks earlier, on November 15, would reduce gear conflict and provide recreational anglers with the opportunity to access fishing areas that are common to both commercial and recreational fisheries prior to the date when commercial crab gear goes in the water.

However, we have received questions from the Quinault Indian Nation about this proposal for the area that overlaps with their Usual and Accustomed fishing area (U&A), which would be in Grays Harbor and the Marine Areas north of Point Chehalis. We also had further discussions with our Crab Advisory Board who raised concerns associated with potentially affecting state/tribal harvest sharing. Based on that, we are revising the staff recommendation (see below) to shift the opening date from December 1 to November 15 only in Willapa Bay.

Effort in the recreational crab fishery on the coast is limited due to the timing of the season, which opens in the winter when weather can be prohibitive for many recreational anglers. As such, much of the coastal recreational crab fishing effort occurs in coastal bays such as Willapa Bay and Grays Harbor. Recreational crab harvest on the coast represents a small proportion of the total Dungeness crab harvest. In recognition of the disparity in catch between the commercial and recreational fleets, measures are in place to provide some assurance that recreational anglers have access to the Dungeness crab resource. For example, recreational anglers allowed to retain crab measuring six inches compared to the six and a quarter inch minimum size for the commercial fishery. Revising the opening date for the recreational crab pot fishery to open on November 15 in Willapa Bay would provide some additional opportunity for recreational anglers and reduce the potential for gear conflict with the commercial sector.

This change does not affect the recreational crab fishery in the Columbia River area, Grays Harbor, or offshore ocean waters.

Staff recommendation:

WDFW staff recommends the Commission consider the public comments and Crab Advisory Board comments, and adopt the proposed changes to WAC 220-330-040 as described in the attached CR-102, but limit the geographic scope to Willapa Bay.

Policy issue(s) and expected outcome:

Opening the recreational crab pot fishery early could increase encounters with soft crab in some years. However, given the minor change from current regulations and the limited effort in the recreational crab fishery on the coast, this change will not negatively affect the Dungeness crab resource. Some in the commercial sector may feel that allowing the recreational fishery to

open earlier than the commercial fishery provides and unfair advantage. Because commercial pots can go in the water prior to December 1, by limiting the earlier start for the recreational fishery to Willapa Bay, the difference in the openings is minor. The effort and expertise in the commercial sector outweighs any disadvantage to allowing an earlier opening for the recreational sector. The proposed changes will reduce gear conflict and provide some additional access to the coastal Dungeness crab resource for recreational users, and limiting the change to Willapa Bay addresses the potential state/tribal harvest sharing implications raised by the Quinault Indian Nation and the Crab Advisory Board.

Fiscal impacts of agency implementation: N/A

Public involvement process used and what you learned:

This issue was brought to the attention of WDFW managers through a petition to the Fish and Wildlife Commission requesting a change to current regulations that describe the opening of the recreational Dungeness crab season on the coast. In order to better facilitate a public process, WDFW staff worked with the petitioner to consider the proposed changes through the typical Commission process. This allowed WDFW staff to communicate the concerns and proposed changes with members of the Coastal Dungeness Crab Advisory Board at meetings this past spring and summer.

WDFW staff met again with the Coastal Dungeness Crab Advisory Board on October 10, 2018 and they indicated that limiting this action to Willapa Bay would be a reasonable approach.

Action requested and/or proposed next steps:

Adopt the changes to coastal recreational Dungeness crab regulations as proposed by Department staff, including limiting the geographic scope to Willapa Bay.

Draft motion language:

Motion: I move to adopt the proposed changes to WAC 220-330-040 as presented by Department staff to revise the opening date from December 1 to November 15 in Willapa Bay.

Is there a "second"?

If so, then motion maker discusses basis for motion; other Commissioners discuss views on motion; amendments, if any, proposed and addressed

Post decision communications plan:

WDFW staff will notify interested parties of the Commission's decision regarding changes to recreational rules for the opening of the recreational crab pot fishery on the coast via email and webpage updates.

Form revised 2-15-18



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: July 23, 2018

TIME: 8:36 AM

WSR 18-16-011

Agency: Washington Department of Fish and Wildlife (WDFW)

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 18-12-038 ; 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 220-330-040 Crab – Areas and seasons – Personal use.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
September 14, 2018	8:00 a.m.	Natural Resources Building Room 172 1111 Washington Street SE Olympia, WA 98501	

Date of intended adoption: September 14, 2018 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Heather Reed

Address: Post Office Box 43200

Email: Heather.Reed@dfw.wa.gov

Fax:

Other:

By (date) _____

Assistance for persons with disabilities:

Contact Dolores Noyes

Phone: 360-902-2349

Fax:

TTY: 360-902-2207

Email: Delores.Noyes@dfw.wa.gov

Other:

By (date) September 13, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Changes to WAC 220-330-040 would revise the date when recreational anglers can use pot gear in coastal management areas (Marine Areas 1 through 3 and 4, west of the Bonilla-Tatoosh line). Currently, this recreational fishery is open year-round, however pot gear can only be used from December 1 through September 15. This change would allow recreational pot gear to be used two weeks earlier starting on November 15. This change would not affect the recreational Dungeness crab fishery in the Columbia River where pot gear is allowed year round.

Reasons supporting proposal: Currently, the recreational Dungeness crab fishery with pot gear opens in coastal marine areas on the same day that the commercial Dungeness crab fishery is scheduled to open. In addition, the commercial fishery is allowed to set commercial crab pots on November 28, 73 hours prior to the December 1 opening. Opening the recreational crab pot fishery two weeks early would provide recreational anglers with some opportunity to access fishing areas that are common to both commercial and recreational fisheries prior to the date when commercial crab gear goes in the water. Effort in the recreational crab fishery on the coast limited due to the timing of the fishery, which opens in December when weather is prohibitive for many recreational crabbers. As such, much of the coastal recreational crab fishing effort is focused in coastal bays such as Willapa Bay and Grays Harbor with recreational harvest representing a very small proportion of the total amount of Dungeness crab harvested each year. In recognition of the disparity between the recreational and commercial crab fisheries on the coast, measures have been implemented to provide some assurance that recreational fishermen have access to the coastal Dungeness crab resource. For example, recreational anglers are allowed to retain smaller crab (6 inches) than allowed in the commercial fishery (6 1/4 inches). Revising the opening of the recreational pot fishery to open on November 15 would provide some additional opportunity to recreational anglers and, because of the lower minimum size allowance for the recreational fishery, would not adversely affect the commercial fishery.

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

Statute being implemented: RCW 77.04.020, 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 (WDFW) Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Heather Reed	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, WA	(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: This project does not affect hydraulics

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. There is no impact on small business as a result of these rule changes. In fact, the proposed changes to the recreational fishery may marginally increase revenues for small business involved with the recreational fishery.

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:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: July 23, 2018

Name: Scott Bird

Title: Rules Coordinator

Signature:



WAC 220-330-040 Crab—Areas and seasons—Personal use. (1) It is unlawful to fish for or possess crab taken for personal use from Puget Sound except during the following seasons:

(a) Marine Area 4 east of the Bonilla-Tatoosh line, and Areas 5, 6, 8-1, 8-2, 9, 10, 11, 12, and 13: Open 7:00 a.m., July 1 through Labor Day, Thursday through Monday of each week.

(b) Those waters of Marine Area 7 south and west of a line projected from Village Point, Lummi Island, through the navigation buoy just east of Matia Island, thence to the buoy at Clements Reef, thence to the easternmost point of Patos Island, thence running along the northern shore of Patos Island to the westernmost point of Patos Island, thence true west to the international boundary and south of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island: Open 7:00 a.m., July 15 through September 30, Thursday through Monday of each week.

(c) Those waters of Marine Area 7 north and east of a line projected from Village Point, Lummi Island through the navigation buoy just east of Matia Island thence to the buoy at Clements Reef thence to the easternmost point of Patos Island, running along the northern shoreline of Patos Island and from the westernmost point of Patos Island true west to the international boundary and north of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island: Open 7:00 a.m. August 15 through September 30, Thursday through Monday of each week.

(2) It is unlawful to fish for or possess crab taken for personal use with shellfish pot gear from Marine Areas 1, 2, 3, and Area 4 west of the Bonilla-Tatoosh line except during the period from (~~December 1~~) November 15 through September 15. Open to gear other than shellfish pot gear year-round.

(3) The Columbia River upstream from a line projected from the outermost end of the north jetty to the exposed end of the south jetty is open to crab fishing for personal use year-round.

(4) It is unlawful to fish for or possess crab taken for personal use with shellfish pot or ring net gear from the waters of Padilla Bay or Swinomish Slough within 25 yards of the Burlington Northern Railroad crossing the northern end of Swinomish Slough except from one hour before official sunrise to one hour after official sunset.

(5) Violation of this section is a misdemeanor, punishable under RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty.