

GREEN SHEET

Meeting dates: August 21, 2009, Commission Conference Call

Agenda item: Coastal Dungeness Crab—Rule Adoption

Staff Contact: Heather Reed, Coastal Marine Resources Policy Coordinator
Intergovernmental Resource Management

Presenter(s): Heather Reed, Coastal Marine Resources Policy Coordinator
Intergovernmental Resource Management

Background:

ESHB 1516 was passed by the Legislature and signed by the Governor during the 2009 session. The bill is related to the recovery of gear used in the coastal commercial Dungeness crab fishery and directs Washington Department of Fish and Wildlife (Department) to issue a gear removal permit to participants in the coastal commercial crab fishery. The permit would allow fishermen to remove crab pots belonging to state licensed fishermen from coastal waters 15 days after the close of the primary season regardless of whether the pots were originally set by the participant or not.

Policy issue(s) you are bringing to the Commission for consideration:

Changes to Washington Administrative Code (WAC) 220-52-040 are necessary to implement the provisions of ESHB 1516. The changes will allow fishermen that would otherwise be acting unlawfully to remove gear left in the ocean after the close of the season if they have obtained a permit by the Department and act in accordance with the provisions of the permit. The proposed changes will allow state licensed fishermen to: 1) operate commercial crab gear when the fishery is closed; and 2) possess pots or buoys without the appropriate tags or with tags that belong to another license owner as long as they are operating under a valid gear recovery permit issued by the Department. Fishers will not be allowed to keep any crab found in pots during gear recovery activity following the close of the season.

The proposed rule changes also identify the specific Revised Code of Washington (RCW) that allows for punishment if the rules are violated. Additional minor editorial changes were made for clarity.

Public involvement process used and what you learned:

Department staff worked closely with industry through the Coastal Dungeness Crab Advisory Board (CDCAB) throughout both the legislative session and during the development of the proposed regulation changes. Coastal Dungeness crab license owners were provided with the proposed rule changes and notification of the opportunity to provide comments during the Commission's rule briefing and public hearing held July 10 - 11, 2009.

Action requested:

We request that the Commission approves the proposed rule changes during the conference call to be held on August 21, 2009. The proposed rule changes implement a program that allows coastal commercial crab license owners to lawfully recover crab gear at the end of the coastal commercial Dungeness crab season with a valid gear recovery permit issued by the Department. The proposed rule changes also include minor editorial changes for clarity and the addition of reference to the RCW that authorizes punishment if the regulations are violated.

Draft motion language:

I move to adopt the proposed changes as drafted:
WAC 220-52-040 Commercial crab fishery—Lawful and unlawful gear, methods and other unlawful acts.

Justification for Commission action:

The proposed rule changes allow for the adoption of WAC conforming to the provisions of ESHB 1516 that was passed during the 2009 legislative session. A permitted gear recovery program cannot be implemented without adoption of the proposed rule changes.

Communications Plan:

Coastal Dungeness crab license owners were notified by mail of the proposed changes to WAC 220-52-040 prior to the July 10-11, 2009 rule briefing and public hearing. Since then Department staff have met with the CDCAB to discuss the details and provisions for a gear recovery permit so that the program can be implemented in a timely manner if the proposed rule changes are adopted. A follow up letter will be sent to all coastal Dungeness crab license owners describing the Commission's decision after the August 21, 2009 conference call and will include the details of lost and abandoned crab gear recovery through a permitted process if appropriate.

Form revised 10/16/2008 - sdy

AMENDATORY SECTION (Amending Order 07-285, filed 11/20/07, effective 12/21/07)

WAC 220-52-040 Commercial crab fishery--Lawful and unlawful gear, methods, and other unlawful acts. (1) **Net fishing boats shall not have crab (~~(aboard)~~) on board.** It is unlawful for any ((vessel geared or equipped with commercial net fishing gear)) person to ((have aboard)) possess any quantity of crab on board a vessel geared or equipped with commercial net fishing gear while ((it is)) fishing with the net gear for commercial purposes or ((when it has other)) while there are commercial quantities of food fish or shellfish ((aboard for commercial purposes)) on board. Violation of this section is punishable under RCW 77.15.550(1), violation of commercial fishing area or time. However, if such crab are taken or possessed in amounts that constitute a violation of commercial fishing area or time in the first degree, the violation is punishable under RCW 77.15.550(2).

(2) **Area must be open to commercial crabbing.** ((Unless otherwise)) Except when acting lawfully under the authority of a valid permit as provided in (a) and (c) of this subsection, it is unlawful for any person to set, maintain, or operate any baited or unbaited shellfish pots or ring nets for taking crabs for commercial purposes in any area or at any time when the location is not ((opened)) open for ((taking crabs for)) commercial ((purposes)) crabbing by permanent rule or emergency rule of the department((:— Provided, That)). Violation of this section is punishable under RCW 77.15.550(1), violation of commercial fishing area or time. However, if such crab are taken or possessed in amounts that constitute a violation of commercial fishing area or time in the first degree, the violation is punishable under RCW 77.15.550(2).

(a) Following the close of a commercial crab season, ((permission)) an emergency coastal crab gear recovery permit may be granted by the director or his or her designee. These emergency permits will be considered on a case-by-case basis ((for)) to allow crab fishers to recover shellfish pots that were irretrievable due to extreme weather conditions at the end of the lawful season opening. Crab fishers must notify and apply to ((department)) the department's enforcement program for such ((permission)) emergency permits within twenty-four hours prior to the close of the commercial crab season.

(b) It is unlawful to fail to follow the provisions of an emergency coastal crab gear recovery permit. Violation of this section is punishable under ESHB 1516.

(c) Fifteen days after the close of the primary coastal commercial crab season, a coastal crab gear recovery permit may be granted by the director or his or her designee for licensed coastal

Dungeness crab fishers to recover crab pots belonging to state licensed fishers that remain in the ocean.

(d) It is unlawful to fail to follow the provisions of a coastal crab gear recovery permit. Violation of this section is punishable under ESHB 1516.

(3) **Crabs must be male and 6-1/4 inches across the back.** It is unlawful for any person acting for commercial purposes to take, possess, deliver, or otherwise control:

(a) Any female Dungeness crabs; or

(b) Any male Dungeness crabs measuring less than 6-1/4 inches, caliper measurement, across the back of the crab's shell immediately in front of the shell's tips. Violation of this section is punishable under RCW 77.15.550 (1)(c).

(4) **Each person and each Puget Sound license is limited to 100 pots.** It is unlawful for any person to take or fish for crab for commercial purposes in the Puget Sound licensing district if he or she is using, operating, or controlling any more than an aggregate total of 100 shellfish pots or ring nets. This limit shall apply to each license. However, this shall not preclude a person ~~((holding))~~ who holds two Puget Sound crab licenses from designating and using the licenses from one vessel as authorized by RCW 77.65.130. Violation of this section is punishable under RCW 77.15.520.

(5) **Additional area gear limits.** ~~((The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel and))~~ It is unlawful for any person to use, maintain, operate, or control crab pots or ring nets in excess of the ((following)) limits((⇆)) prescribed in each of the following Marine Fish-Shellfish Management and Catch Reporting Areas. Violation of this section is punishable under RCW 77.15.520.

(a) 10 pots in Marine Fish-Shellfish Management and Catch Reporting Area 25E ~~((⇆))~~ ;

(b) 10 pots in all waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A south of a line projected true west from Travis Spit on Miller Peninsula ~~((⇆))~~ ;

(c) 20 pots in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of a line projected from the new Dungeness Light to the mouth of Cooper Creek, and east of a line projected from the new Dungeness Light to the outermost end of the abandoned dock at the Three Crabs Restaurant on the southern shore of Dungeness Bay((⇆)) ; and

(d) 10 pots in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the I77 Rayonier Dock.

(6) **Groundline gear is unlawful.** ~~((No crab pot or ring net may be attached))~~ It is unlawful to attach or ((connected)) connect a crab pot or ring net to ((other)) another crab pot or ring net by a common groundline or any other means that connects crab pots together. Violation of this section is punishable under RCW 77.15.520.

(7) **Crab buoy((s)) and pot((s)) tagging requirements.**

(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 and pot tag ~~((s))~~ that meet ~~((s))~~ the requirements of this subsection except as provided for in (b) of this subsection. Violation of this section is punishable under RCW 77.15.520.

(b) Persons operating under a valid coastal gear recovery permit issued by the department may possess crab pots or buoys missing tags or bearing the tags of another license holder, provided that the permittee adheres to provisions of the permit.

~~((b))~~ (c) Coastal crab pot tags: Each shellfish pot used in the coastal Dungeness crab fishery must bear a tag that identifies either the name of the vessel being used to operate the pot or the Dungeness crab fishery license number of the owner of the pot, and the telephone number of a contact person.

~~((c))~~ (d) Puget Sound crab pot tags: In Puget Sound, all crab pots must have a durable, nonbiodegradable tag securely attached to the pot and permanently and legibly marked with the license owner's name or license number, and telephone number. If the tag information is illegible, or if the tag is lost for any reason, the pot is not in compliance with state law.

~~((d))~~ (e) Crab buoy tags: The department will issue crab pot buoy tags to the owner of each commercial crab fishery license upon payment of an annual buoy tag fee ~~((of seventy cents))~~ 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. Only department-issued crab buoy tags may be used, and each crab pot is required to have a buoy tag.

~~((e))~~ (f) Puget Sound replacement crab buoy tags: Additional tags to replace lost tags will only be issued 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 shall state the number of buoy tags lost, the location and date where the lost gear or tags were last observed, and the presumed cause of the loss.

~~((f))~~ (g) Coastal replacement crab buoy tags: Coastal crab license holders with a 300-pot limit will be able to replace up to fifteen lost tags by January 15th, up to a total of thirty lost tags by February 15th, and up to a total of forty-five lost tags after March 15th of each season. Coastal crab license holders with a 500-pot limit will be able to replace up to twenty-five lost tags by January 15th, up to a total of fifty lost tags by February 15th, and up to a total of seventy-five lost tags after March 15th of each season. In the case of extraordinary loss of crab pot gear, the department may, on a case-by-case basis, issue replacement tags in excess of the amount set out in this subsection. Replacement buoy tags for the coastal crab fishery will only be issued after a signed affidavit is received by the department.

(8) No person can possess or use gear with ~~((other))~~ another person's crab pot tag or crab buoy tag. ~~((No))~~ It is unlawful for

any person (~~may~~) to possess, use, control, or operate any crab pot not bearing a tag identifying the pot as that person's, or any buoy not bearing tags issued by the department to that person, except (~~that~~) under the following circumstances:

(a) An alternate operator designated on a primary license may possess and operate crab buoys and crab pots bearing the tags of the license holder.

(b) Persons operating under a valid coastal gear recovery permit issued by the department may possess crab pots or buoys bearing the tags of another license holder, provided that the permittee adheres to provisions of the permit.

(c) Violation of this section is punishable under ESHB 1516.

(9) **~~((Cannot))~~ No person can tamper with pot tags.** (~~((No))~~) It is unlawful for any person (~~(shall)~~) to remove, damage, or otherwise tamper with crab buoy or pot tags except when lawfully applying or removing tags on the person's own buoys and pots. However, persons operating under a valid coastal gear recovery permit or emergency gear recovery permit, issued by the department and who adheres to the permit's provisions may possess crab pots or buoys bearing the tags of another license holder. Violation of this section is punishable under RCW 77.15.180 (3)(b).

(10) **~~((Thirty-day period))~~ When it is unlawful to buy or land crab from the ocean without crab vessel inspection.** It is unlawful for any fisher or wholesale dealer or 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 during the first thirty days following the opening of a coastal crab season from any vessel (~~(which)~~) that has not been issued a Washington crab vessel inspection certificate. The certificate will be issued to vessels made available for inspection in a Washington coastal port and that are properly licensed for commercial crab fishing if no Dungeness crabs are (~~(aboard)~~) on board. (~~((Inspections will be performed by))~~) Authorized department personnel will perform inspections not earlier than twelve hours prior to the opening of the coastal crab season and during the following thirty-day period.

(11) **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 shall be 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.

(12) **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 a (~~(shellfish))~~ crab pot limit has been assigned to the Dungeness crab(-)coastal fishery license held by the person, or to the equivalent Oregon or California Dungeness crab fishery license held by the person.

(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, and 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.

(c) It is unlawful for a person to take or fish for Dungeness crab or to deploy ((~~shellfish~~)) crab pots unless the person is in possession of valid documentation issued by the department that specifies the ((~~shellfish~~)) crab pot limit assigned to the license.

(13) Determination of coastal crab pot limits.

(a) The number of ((~~shellfish~~)) crab pots assigned to a Washington Dungeness crab((-))coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license will be 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, ((~~that~~)) 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 shall be used to determine and assign a ((~~shellfish~~)) 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((~~7~~)); from December 1, 1997, through September 15, 1998((~~7~~)); 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 shall determine the crab pot limit for that license. A crab pot limit of 300 shall be assigned to a license with landings that total from zero to 35,999 pounds and a crab pot limit of 500 shall be assigned to a license with landings that total 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 ((~~shellfish~~)) 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. 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 ((~~shellfish~~)) crab pot limit, provided that the same vessel was named on the licenses, and the same person held the licenses. A ((~~shellfish~~)) 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 shall be assigned more than one ((~~shellfish~~)) coastal crab pot limit.

(14) Appeals of coastal crab pot limits. An appeal of a

((~~shellfish~~)) crab pot limit by a coastal commercial license holder shall be filed with the department on or before October 18, 2001. The shellfish pot limit assigned to a license by the department shall remain in effect until such time as the appeal process is concluded.

(15) **Coastal - Barging of crab pots by undesignated vessels.** It is ((~~lawful~~)) unlawful for a vessel not designated on a Dungeness crab((-))coastal fishery license to be used to deploy ((~~shellfish~~)) crab pot gear ((~~provided that~~)) except as prescribed below:

(a) Such a vessel may not carry ((~~aboard~~)) on board more than 250 ((~~shellfish~~)) crab pots at any one time.

(b) Such a vessel may deploy ((~~shellfish~~)) crab pot gear only during the 64-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date.

(c) The ((~~lawful owner~~)) primary or alternate operator of the ((~~shellfish~~)) crab pot gear named on the license associated with the gear must be ((~~aboard~~)) on board the vessel when the gear is being deployed. Violation of this section is punishable under RCW 77.15.500.

(16) **Coastal crab buoys - Registration and use of buoy brands and colors.**

(a) 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 shall be allowed to register with the department only one, unique buoy brand and one buoy color scheme per license. Persons holding more than one state license ((~~state~~)) shall register buoy color(s) for each license that are distinctly different. The buoy color(s) shall be shown in a color photograph. Violation of this section is punishable under RCW 77.15.520.

(b) 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. Violation of this section is punishable under RCW 77.15.520.



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington Department of Fish and Wildlife

- Preproposal Statement of Inquiry was filed as WSR 09-06-075 on 3-03-09; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information: (Describe Subject) WAC 220-50-040, Commercial crab fishery- Lawful and unlawful gear, methods, and other unlawful acts.

Hearing location(s):
 Natural Resources Building ~ First Floor, Room 172
 1111 Washington St. SE
 Olympia, Washington 98504

Date: July 10-11, 2009 Time: 8:45 AM

Submit written comments to:
 Name: Rules Coordinator
 Address: WDFW Enforcement, 600 Capitol Way No., Olympia, WA 98501-1091

E-mail: Lori.Preuss@dfw.wa.gov
 Fax: (360) 902-2155 by (date): June 30, 2009

Assistance for persons with disabilities: Contact Susan Yeager by June 30, 2009
 TTY (360) 902-2207 or (360) 902-2267

Date of intended adoption: August 7-8, 2009
 (Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The rule implements a program to recover lost or abandoned commercial crab gear after the close of the coastal commercial fishery season through permits issued to licensed commercial crab fishers.

Reasons supporting proposal: Lost or abandoned crab gear can continue to entrap crabs and other marine species and contribute to habitat degradation. The proposed program allows commercial crab fishers to reduce these negative effects on marine life and habitat by removing derelict crab gear from the ocean.

Statutory authority for adoption: RCW 77.12.047 and RCW 77.04.020

Statute being implemented: RCW 77.12.047 and RCW 77.04.020

Is rule necessary because of a:

- Federal Law?
 - Federal Court Decision?
 - State Court Decision?
- If yes, CITATION:

- Yes No
- Yes No
- Yes No

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DATE: **May 28, 2009**

TIME: **11:22 AM**

WSR 09-12-054

DATE
May 28, 2009

NAME (type or print)
Lori Preuss

SIGNATURE
Lori Preuss

TITLE
Rules Coordinator

(COMPLETE REVERSE SIDE)

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..... Lorna L Wargo	1111 Washington Street, Olympia	(360) 753-2600
Implementation.... Lisa Veneroso	1111 Washington Street, Olympia	(360) 902-2651
Enforcement.....Bruce Bjork	1111 Washington Street, Olympia	(360) 902-2373

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone

fax

e-mail

No. Explain why no statement was prepared: This proposal does not impose any costs. Participation by commercial fishers in the proposed lost and abandoned gear recovery program is voluntary.

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 ()

e-mail

No: Please explain: These proposals do not affect hydraulics.