

WSR 21-01-089
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-255—Filed December 10, 2020, 4:37 p.m., effective December 10, 2020, 4:37 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to delay the season opening of the coastal commercial Dungeness crab season in all Washington coastal areas due to high levels of the marine biotoxin, domoic acid. The commercial season delay will extend south to Cape Falcon, Oregon in order to prosecute an orderly fishery in areas where participation overlaps state lines. This emergency rule also requires notification to the Washington department of fish and wildlife enforcement program if a vessel participates in the commercial Dungeness crab fishery in areas that are not closed (south of Cape Falcon, Oregon) and transit those crab for delivery into Washington ports. This notification is necessary to enforce the season delay and prevent toxic crab from being harvested or landed. A fair start provision, which will require any vessel that participates in the coastal crab fishery south of Cape Falcon, Oregon that opens before the closed area, to wait thirty days after the closed area opens before participating in the delayed area. This fair start provision is necessary to provide fishery participants that chose to wait and start in the delayed area a fair opportunity to harvest crab without competition from those that have already landed crab in other areas. This fair start is also necessary to protect harvest sharing agreements in tribal comanaged areas north of Point Chehalis that are also delayed due to domoic acid and to provide for agreed-to head start provisions.

Citation of Rules Affected by this Order: Amending WAC 220-340-420 and 220-340-450.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The area north of Cape Falcon, Oregon, extending to the United States/Canadian border is closed to the state commercial fishery due to elevated levels of the marine toxin domoic acid which were tested in crab viscera off Long Beach, Washington. Notification of transit through the closed area is required to enforce this closure and prevent toxic crab from being harvested or landed. The thirty day fair start delay is needed to provide a fair start for vessels impacted by the closure due to marine toxins. The coastal commercial Dungeness crab fishery is highly competitive and the value from the fishery is highest during the first several weeks of the season when crab abundance and catch per unit effort are the highest. Opening the fishery without [a] fair start provision would have a significant economic impact on participants who chose to fish in areas that have been delay[ed] if participation was not restricted to prohibit those that have already started the fishery in areas that opened earlier from moving to the delayed area for thirty days after that area opens. The states of Oregon and California will impose the same delay. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 10, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-42000D Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420, effective immediately until further notice:

(1) It is unlawful to fish for, possess or deliver Dungeness crab unless the following conditions are met:

(a) Vessels that participated in the coastal Dungeness crab fishery South of Cape Falcon, Oregon (46°45.00 North Latitude) to Point Arena, CA, may possess crab for delivery into Washington ports south of 46°45.00 North Lat., provided the crab were taken south of Cape Falcon, Oregon (46°45.00 North Lat.)

(b) The vessel does not enter the area north of 46°45.00 North Lat. unless the operator of the vessel has contacted the Washington Department of Fish and Wildlife prior to entering this area. Prior to entering the area north of 46°45.00 North Lat., the vessel operator must call or text 360-581-3337, and report the vessel name, operator name, estimated amount of crab to be delivered in pounds, and the estimated date, time, and location of delivery 24 hours prior to entering the area.

(2) Unless otherwise amended all other provisions of the permanent rule remain in effect.

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NEW SECTION

WAC 220-340-45000U Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-340-450 effective immediately until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section.

(1) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area where the season opening is delayed due to marine biotoxins for the first 30 days following the opening of the area if the vessel was employed in the coastal crab fishery during the previous 45 days.

(2) Unless otherwise amended all other provisions of the permanent rule remain in effect.

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