

WSR 23-16-050
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-10—Filed July 26, 2023, 8:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-10-081 on May 2, 2023.

Title of Rule and Other Identifying Information: Amending coastal and Puget Sound recreational and commercial fixed gear fishery and implementing electronic monitoring for the coastal commercial Dungeness crab fishery.

Hearing Location(s): On September 28-30, 2023, at 8:00 a.m., at the Yakima Convention Center, 10 North 8th Street, Yakima, WA 98901; in person and online. Visit our website at <https://wdfw.wa.gov/about/commission/meetings> or contact the commission office at 360-902-2267 or email commission@dfw.wa.gov for instructions on how to join the meeting.

Date of Intended Adoption: October 26-28, 2023.

Submit Written Comments to: Heather Hall, P.O. Box 43200, Olympia, WA 98501, email crab-and-shellfish-rulemaking@PublicInput.com, website <https://publicinput.com/crab-and-shellfish-rulemaking>, phone comments 855-925-2801, project code 2872, by October 2, 2023.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email Title6@dfw.wa.gov, by September 18, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes to regulations include both non-administrative and administrative amendments. The non-administrative changes are presented first followed by administrative changes. Each of the amended rules and their specific changes are listed below:

Nonadministrative:

Installation and Use of Electronic Monitoring (WAC 220-340-420): Proposed rule changes would require the installation and use of an electronic monitoring (EM) system on vessels participating in Washington's nontribal coastal commercial Dungeness crab fishery. The EM system is a tool that enables the collection of more accurate and timely fishing information, thereby improving the Washington department of fish and wildlife's (WDFW) ability to ensure fishing is not occurring within closed areas, confirm that participants are not fishing before the opening of the crab season, confirm adherence to license-based or seasonal pot limits, and gather additional information that may aid in identifying instances of gear tampering.

Coastal Commercial Crab Logbook - Not Required with Operational EM (WAC 220-340-460): Proposed rule changes would eliminate the requirement for an operator in the coastal Dungeness crab fishery to maintain a paper logbook when an EM system is installed and fully operational on the vessel. A paper logbook would only be required when an EM system has failed. The effect of this change is to reduce the reporting burden on vessel operators.

Line Marking in Coastal Dungeness Crab Fishery (WAC 220-340-430): Proposed rule changes would specify that line-marking must be sufficient to identify it as being exclusive to the coastal Dungeness crab fishery and that the two 12-inch red marks, an existing line-marking requirement for coastal Dungeness crab fishery participants, be con-

tinuous. These proposed changes standardize line markings in the coastal Dungeness crab fishery and clarify that the line itself is to be marked for the full extent of the 12-inch span. These changes advance the intended purpose of line-marking to increase gear visibility in marine mammal entanglements and thus fishery attribution.

Prohibit Line Marks or Colors Required in Another Fishery (WAC 220-330-020, 220-340-430, 220-340-510, 220-340-520, and 220-360-220): Proposed rule changes would prohibit the use of line marks or color combinations in Washington fixed gear fisheries that are required for other state or federal fisheries. The effect of the proposed rule changes is to disallow fishers that currently do not and are not required to mark the fishing line from the marking line in a manner that is consistent with another fishery and to further support fishery-specific attribution of line in marine mammal entanglements.

Crab and Shrimp Buoys (WAC 220-330-020): Proposed changes would allow buoys to be submerged by a director-issued permit in personal use (i.e., recreational) fisheries.

Limit Line in Shellfish and Hagfish Fisheries to Amount Needed (WAC 220-330-020, 220-340-430, 220-340-510, and 220-340-520): Proposed rule changes would allow no more than the amount of line required to compensate for tides, currents, and weather in commercial and recreational fisheries for Dungeness crab and shrimp, and commercial hagfish. The change is necessary to standardize and implement fishing best practices consistent with reducing gear entanglements with marine mammals.

Standardize Crab and Shrimp Pot Buoy Colors (WAC 220-330-020, 220-340-430, and 220-340-520): Proposed rule changes would standardize and clarify buoy colors for recreational and commercial crab and shrimp pot gear. These changes standardize that buoys in the Puget Sound and coastal commercial crab fisheries may not be both red and white unless at least 30 percent of the buoy is marked in additional color(s). The proposed rule changes clarify that for commercial shrimp fisheries in Puget Sound, buoy color, already required to be orange, must be *solid* orange and for Puget Sound recreational shrimp pots, already required to be yellow, must be *solid* yellow. These proposed changes are consistent with the intent to support attribution of marine mammal entangled gear to a specific fishery.

Administrative Rule Changes:

Define a New Management Category for Nonspot Shrimp Species (WAC 220-320-015): Proposed rule changes would define a new management "non-spot shrimp" or pandalid complex to include shrimp species other than spot shrimp. The purpose for the change is to eliminate the need to list each nonspot shrimp species individually, thereby improving the clarity and brevity of the rule.

Require Annual Registration of Commercial Crab Buoy Color Schemes (WAC 220-340-430): Proposed rule changes would align Puget Sound and coastal commercial Dungeness crab fishery requirements and specify that crab fishery participants must complete buoy registration annually using the WDFW online registration form. Existing rules require the creation and registration of a unique buoy color scheme for each commercial license but do not specify a frequency.

Buoy Tags in Commercial Dungeness Crab Fisheries (WAC 220-340-430): Proposed rule changes would cap the number of buoy tags issued in the Puget Sound commercial crab fishery, limit the number of potential pots deployed to the current maximum pot limit of 100 per license, with no pot replacement. The proposed rule changes also streamline the reporting of derelict gear and issuance of replacement

tags for commercial users, reduce waste, and reduce the possibility of issuing of a buoy tag for the wrong fishery.

Puget Sound Commercial Pot Shrimp (WAC 220-340-520): Proposed rule changes would clarify that the pot limit for commercial shrimp pot fisheries in Puget Sound are based on the fishery and gear type and are not per license limit. Additionally, the changes would limit fishing depth and align the rule with revised electronic fish ticket rules.

Puget Sound Commercial Crab and Shrimp Fishery Boundary Designations (WAC 220-320-120, 220-320-140, 220-340-455, and 220-340-530): Proposed rule changes would update Puget Sound commercial crab and shrimp fishery boundary designations. The purpose of the changes is to correct outdated boundary designations and add specially designated fishing areas.

Shellfish Harvest Logs (WAC 220-340-030): Proposed rule changes would correct and update logbook reporting requirements for Puget Sound and coastal commercial shellfish fisheries where logs are required by defining some rule elements separately either by fishery or region (i.e., Puget Sound or coast) and by deleting unnecessary requirements. The changes are needed to clarify rule language and align rule language with the implementation of mandatory electronic fish tickets and electronic monitoring.

Fish Receiving, Transportation Ticket, and Quick Reporting Revisions (WAC 220-352-060, 220-352-230, 220-352-340, and 220-340-420): Proposed rule changes would describe when and where electronic fish tickets must be submitted to the department, including provisions for when access to cellular broadband is not immediately available when the fish ticket is completed. The proposed changes would clarify applicability of transportation ticket requirements by including "shellfish" in the rule, improve transportation ticket information by requiring the WDFW-issued vessel identification number and date of harvest, and clarify transportation ticket requirements for crab removed from the vessel prior to landing in Puget Sound. Proposed rule changes clarify stored crab reporting and time frame, and sale reporting for stored crab.

Reasons Supporting Proposal: The adoption of these proposed rules will enhance fishery monitoring and clarify existing rules. Overall, these rule amendments will accomplish conservation objectives, advance achieving orderly fisheries, and improve the enforceability of current rules.

Nonadministrative:

Installation and Use of Electronic Monitoring (WAC 220-340-420); **Coastal Commercial Crab Logbook - Not Required with Operational EM** (WAC 220-340-460): The EM system is necessary to ensure fishing is not occurring within closed areas, to monitor adherence to license-based and seasonal pot limits, and to collect spatial and temporal fishing data to inform management of the fishery, including addressing marine mammal interactions, particularly endangered humpback whales.

WDFW comanages the nontribal coastal commercial Dungeness crab fishery with the tribal governments whose usual and accustomed (U&A) fishing grounds are located on the outer coast of Washington state. As a comanager of the fishery, WDFW must ensure accurate reporting of where and when state-licensed fishermen are fishing, and that nontribal fishery participants do not cross into areas that are reserved for tribal fishing only. WDFW must also implement actions to reduce the entanglement of whales in Dungeness crab fishing gear. The EM system will more accurately identify the locations in which fishing gear is

deployed thereby improving data inputs to models that estimate or predict the distribution and likelihood of cooccurrence. With this collected data, WDFW could consider management measures to reduce the amount of gear that could be deployed in areas of concern. Finally, implementation of EM systems will improve WDFW's ability to manage the fishery with respect to biotoxins (particularly domoic acid). With EM systems in place, WDFW would have the ability to manage biotoxin events using area closures to prohibit the fishery in discrete areas affected by biotoxins. Like other area management needs, the EM system ensures fishing around biotoxin restricted areas is enforceable and protects public health.

Line Marking in Coastal Dungeness Crab Fishery (WAC 220-340-430); **Prohibit Line Marks or Colors Required in Another Fishery** (WAC 220-330-020, 220-340-430, 220-340-510, 220-340-520, and 220-360-220); **Crab and Shrimp Buoys** (WAC 220-330-020); **Limit Line in Shellfish and Hagfish Fisheries to Amount Needed** (WAC 220-330-020, 220-340-430, 220-340-510, and 220-340-520); **Standardize Crab and Shrimp Pot Buoy Colors** (WAC 220-330-020 and 220-340-520): These regulatory changes enhance compliance with the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). Large whales and marine turtles are among those species most affected by fishing gear entanglements, and these animals are federally protected. To address entanglement cases with marine mammals where the entangling gear is visible but cannot be used to confidently confirm the associated fishery, the National Marine Fisheries Service has indicated that lines and buoys marked in a way that is unique to each fishery would aid in achieving compliance with the MMPA and ESA. Marking supports positive attribution of gear to the fishery. Attribution can be improved by prohibiting a fishery from using marks/line colors required in another fishery; other coastal states have implemented or intend to implement a similar rule. These proposed changes to the rules clarify the requirements for unique line marks or buoy colors for Washington fisheries that use line and buoys as part of the gear configuration. These proposed changes also support reducing the amount of fishing line in the water, thereby reducing entanglement risk.

Administrative Rule Changes:

To effectively manage commercial and recreational shellfish fisheries, WDFW utilizes a variety of management measures relating to fishing area, gear, and catch reporting. As part of the proposed rule package, to improve management and enforcement capabilities, WDFW is also proposing administrative rule changes for coastal and Puget Sound recreational and commercial shellfish fisheries.

Define a New Management Category for Nonspot Shrimp Species (WAC 220-320-015): This rule proposal simplifies regulatory language, supporting improved compliance and enforcement.

Require Annual Registration of Commercial Crab Buoy Color Schemes (WAC 220-340-430): The rule change to require annual registration would ensure commercial buoy color schemes remain unique to each license and records are up-to-date such that lost or entangled gear can be associated with the owner. This rule change improves current buoy color registration practices and incorporates the use of an electronic buoy registration form to ensure that licensed harvesters are compliant with conservation plan requirements. The rule change proposal would also create a data source for enforcement to identify gear with gear owners. The rule change would advance efforts to further improve gear marking and aid in achieving compliance with the MMPA and ESA.

Buoy Tags in Commercial Dungeness Crab Fisheries (WAC 220-340-430): The proposed rule changes streamline the reporting of derelict gear and issuance of replacement tags for commercial users, reduce waste and costs by limiting the number of replacement tags that can be obtained, and minimizes the possibility of issuing of a buoy tag for use in the wrong fishery.

Puget Sound Commercial Pot Shrimp (WAC 220-340-520): The proposed rule change implements depth restrictions to limit interaction with nontarget species in the nonspot shrimp fishery per Puget Sound manager shellfish agreements.

Puget Sound Commercial Crab and Shrimp Fishery Boundary Designations (WAC 220-320-120, 220-320-140, 220-340-455, and 220-340-530): The proposed rule changes provide improved guidance for commercial harvesters and dealer/buyers, aiding compliance.

Shellfish Harvest Logs (WAC 220-340-030): The proposed rule changes provide improved guidance for commercial harvesters and dealer/buyers, aiding compliance.

Fish Receiving, Transportation Ticket, and Quick Reporting Revisions (WAC 220-352-060, 220-352-230, 220-352-340, and 220-340-420): The proposed rule changes provide improved guidance for commercial harvesters and dealer/buyers, aiding compliance.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Lorna Wargo, 1111 Washington Street S.E., Olympia, WA, 360-581-5611; Implementation: Coast - Matt George, 48 Devonshire Road, Montesano, WA 98563, 360-249-4648; or Puget Sound - Katelyn Bosley, 375 Hudson Street, Port Townsend, WA 98368, 360-302-3030; and Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA, 360-902-2373.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328(5), a cost-benefit analysis is not required for this rule as WDFW is not implementing chapter 77.55 RCW with this rule.

Scope of exemption for rule proposal:

Is not exempt.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

An evaluation by WDFW determined that the rule requirement of the EM system is the only element that would result in costs to businesses. The other elements of the rule package are not expected to result in costs to businesses. Therefore, this evaluation of whether the proposed rule is likely to result in more-than-minor costs is focused on the EM system requirement of the rule proposal. Based on a range of annual revenues in the coastal Dungeness crab fishery, the analysis estimates a minor cost threshold of between \$450 and \$1,500 for affected businesses. The likely cost of complying with the proposed rule ranges from \$1,830 to \$2,045. As the businesses in the coastal commercial Dungeness crab fishery are almost exclusively small businesses (fewer than 50 employees), this analysis finds that the proposed rule

would have a disproportionate cost impact on small businesses. WDFW has provided significant opportunities for stakeholder input during the development of the proposed rule making over a period of four years. Based on stakeholder input, potential mitigation options to defray the costs to small businesses were identified. These include the cessation of the logbook requirements, allowing flexibility in the type of the EM unit purchased, coordinating EM unit purchases to take advantage of bulk pricing, and allowing fishermen to revert to use of paper logbooks in cases of EM system malfunction.

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [23-17](#) issue of the Register.

A copy of the statement may be obtained by contacting Lorna Wargo, 1111 Washington Street S.E., Olympia, WA, phone 360-581-5611, email Lorna.Wargo@dfw.wa.gov.

July 26, 2023
Scott Bird
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [23-17](#) issue of the Register.