

WSR 25-03-125
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-13—Filed January 21, 2025, 10:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-20-058 on September 25, 2024.

Title of Rule and Other Identifying Information: Amending commercial crab gear requirements and implementing comprehensive line marking in the coastal Dungeness crab fishery.

Hearing Location(s): On March 20-22, 2025, at 8:00 a.m., in person in Kennewick (Tri-Cities) and virtually. Visit our website at <https://wdfw.wa.gov/about/commission/meetings>, 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: Not before April 1, 2025.

Submit Written Comments to: Agency Rules Coordinator, P.O. Box 43200, Olympia, WA 98501, email commercial_crab_rules_cr102@publicinput.com, https://publicinput.com/commercial_crab_rules_cr102, voice comments call 855-925-2801 and enter code 11027, beginning January 23, 2025, 12:00 p.m., by March 24, 2025, 11:59 a.m.

Assistance for Persons with Disabilities: Contact VI/ADA compliance coordinator, phone 360-902-2349, TTY 711, email Title6@dfw.wa.gov, <https://wdfw.wa.gov/accessibility/requestsaccomodation>, by March 17, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes include both non-administrative and administrative amendments and are described below. The nonadministrative changes are presented first, followed by administrative changes.

Nonadministrative:

Comprehensive line marking in the coastal Dungeness crab fishery (WAC 220-340-430): Proposed changes would require that line marking must be sufficient to identify the line as being exclusive to the coastal Dungeness crab fishery with dual-colored state fishery specific manufactured line or sets of solid marks with a phased implementation. With rule adoption, the current continuous 12-inch red mark within one fathom of the buoy would be required; for the 2025-2026 fishing season, all trailer/surface line must be marked; and for the 2028-2029 season, the uppermost 15 fathoms of the main vertical line must be marked. These changes advance the intended purpose of line marking to increase gear visibility in marine mammal entanglements and thus traceability to the fishery.

Surface gear limitations in the coastal Dungeness crab fishery (WAC 220-340-430): Proposed rule changes would limit the overall length of surface gear to no more than 36 feet of line and limit the number of buoys to no more than three, which includes the main (diver) buoy and up to two trailer buoys. A small end marker buoy is permissible and does not count towards the total. This proposed measure limits the length of surface gear allowed on each pot to reduce entanglement risk.

Prohibition to register or use buoy brand required by a treaty tribal fishery in the coastal Dungeness crab fishery (WAC

220-340-430): Proposed changes would prohibit a buoy brand required by a treaty tribal fishery to be used or registered for the nontreaty coastal Dungeness crab fishery. The effect of the proposed rule is to not allow fishers to use buoy brands used in a treaty tribal fishery to support the traceability of entangled gear to the nontreaty fishery.

Prohibit the use of line marks or colors required in another fishery (WAC 220-340-430): Proposed changes would prohibit the use of line marks or manufactured color combinations in Washington commercial crab fisheries that are required for other west coast state or federal fisheries. The effect of the proposed rule change is to disallow fishers to use line marked or manufactured to marking specifications required in another fishery and to further support the traceability of line in marine life entanglements to the fishery of origin. Line marking prohibitions were adopted for all other Washington fixed gear fisheries in prior rule making; the proposed changes expand the prohibition to the commercial Dungeness crab fisheries for consistency and comprehensive coverage.

Administrative:

Update language in commercial crab fisheries to describe what is lawful (WAC 220-340-430): Proposed changes would shift from language that described what is unlawful to language that describes what is required with regards to buoy brand registration and coastal line marking requirements. The effect of the change is to improve clarity regarding what action is required for compliance.

Designated operator in commercial crab fisheries is responsible for compliance (WAC 220-340-430): Proposed changes would clarify the natural person who is responsible for compliance with regulations. Changes shift responsibility from the license holder to the designated vessel operator for buoy brand registration and fishing with buoys not registered. Changes clarify the vessel operator is responsible for using only the amount of line reasonably necessary, where the current rule does not specify a responsible party.

Clarify buoy registration requirements (WAC 220-340-430): Proposed changes would clarify that required annual buoy brand and color combinations must be completed prior to fishing each season. Existing rules require the registration of a unique buoy color scheme and buoy brand each season, but do not specify when in the season registration is required. Additionally, proposed rule changes would clarify that buoys fished under a single license must be uniformly marked with the buoy brand number submitted during registration.

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

Comprehensive line marking in the coastal Dungeness crab fishery (WAC 220-340-430); **Prohibition to register or use buoy brand required by a treaty tribal fishery in the coastal Dungeness crab fishery** (WAC 220-340-430); **Prohibit the use of line marks or colors required in another fishery** (WAC 220-340-430): These regulatory changes enhance compliance with federal laws; specifically, 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 entanglements with marine mammals where the entangling gear is visible

but cannot be used to confidently confirm the associated fishery, the National Marine Fisheries Service (NMFS) has indicated that lines and buoys marked in a manner that is unique to each fishery would aid in achieving compliance with the MMPA and ESA. This proposed rule aims to contribute to the coordinated efforts to improve traceability of entangled fishing lines to their source fishery along the United States (U.S.) west coast by prohibiting the use of line marks required in other fisheries, prohibiting the use of treaty tribal buoy brands, and requiring the use of red and black line marking in the Washington coastal Dungeness crab fishery. Comprehensive gear marking is necessary to meet the monitoring needs of fisheries gear entanglements in marine life and will aid in fishery attribution. Comprehensive line marking requirements have been developed in collaboration with other west coast fisheries.

Surface gear limitations in the coastal Dungeness crab fishery

(WAC 220-340-430): The proposed rule also aims to directly address entanglement risk by setting new limits in the coastal fishery on the overall length of surface gear, including main (diver) and trailer buoys, and capping the number of trailer buoys at two per pot. This is necessary because the risk of whale entanglement can be reduced by setting standards that limit surface gear.

Update language in commercial crab fisheries to describe what is lawful (WAC 220-340-430); **Designated operator in commercial crab fisheries is responsible for compliance** (WAC 220-340-430); **Clarify buoy registration requirements** (WAC 220-340-430): The proposed changes improve management and enforcement of coastal and Puget Sound commercial Dungeness crab fisheries. Current regulations often assign the compliance responsibility to the license holder; however, license holders often lease their licenses and may not participate in the fishery. The rule language fails to specify the responsible party at times. The proposed changes provide clarity by shifting responsibility to the designated vessel operator, who is specified on the license. The changes clarify that it is the vessel operator who must register buoy brands and color combinations and that registration is required annually and prior to the start of fishing.

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: Washington department of fish and wildlife (WDFW), governmental.

Name of Agency Personnel Responsible for Drafting: Megan Hintz, 1111 Washington Street S.E., Olympia, WA 98501, 564-215-1757; Implementation: Lorna Wargo, 1111 Washington Street S.E., Olympia, WA 98501, 360-581-5611; and Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2605.

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.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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

Small Business Economic Impact Statement

Pursuant to Regulatory Fairness Act (Chapter 19.85 RCW)

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 25-04 issue of the Register.

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

January 20, 2025
Scott Bird
Rules Coordinator

RDS-6114.1

AMENDATORY SECTION (Amending WSR 23-22-110, filed 10/31/23, effective 12/1/23)

WAC 220-340-430 Commercial crab fishery—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 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 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, except if authorized by permit issued by the director, 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, except if authorized by permit issued by the director, 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) All remaining, undeployed buoy tags per license per region must be onboard the designated vessel and available for immediate inspection by the department, except under the following conditions: The holder or alternate operator of a Puget Sound crab license has declared, as permitted under (f) of this subsection, that deployed tags have been lost and are unrecoverable, under penalty of perjury, and has been granted permission by the department to use undeployed buoy tags as a replacement.

(f) Replacement crab buoy tags.

(i) Puget Sound: Puget Sound commercial crab license holders are required to request permission to use undeployed buoy tags in the event deployed buoy tags are lost and are unrecoverable. Requests to use undeployed buoy tags 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. Requests must be made using a department provided electronic form.

(ii) Coastal: The department only issues replacement buoy tags for the coastal crab fishery in the case of extraordinary loss or on a case-by-case basis. Replacement buoy tags will not be issued in excess of the license holder's permanent pot limit.

(4) A violation of subsection (3) of this section is a gross misdemeanor, punishable under RCW 77.15.520 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))~~ five pounds of weight is attached, unless otherwise authorized by permit issued by the director.

(b) It is unlawful to use bleach, antifreeze or detergent bottles, paint cans, or any other container as a buoy. The line attaching a buoy to shellfish gear must be weighted sufficiently to prevent the excess line from floating on the water's surface.

(c) No buoys attached to Puget Sound or coastal commercial crab gear 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.

(d) ~~((It is unlawful for))~~ Any coastal or Puget Sound commercial Dungeness crab fishery license ((holder)) designated operator must register the buoy brand number and buoy color or color combinations to be used with the license to fish for crab ((unless the license holder has registered the buoy brand and buoy color(s) to be used with the license. The license holder, or alternate operator, must register the buoy brand and buoy color(s) to be used with the license)) each crab

season prior to the commencement of fishing using the WDFW online registration form. (~~In the event that a license is transferred to another vessel or owner in the same season, the license holder must re-register the buoy brand and buoy color(s) to be used with the license for the remainder of that crab season. A license holder may register only one unique buoy brand and one unique 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~~) Buoy registration must provide color photographs that allows identification of the registered buoy brand number and all color or color combinations used on the buoy.

(i) All buoys fished under a single license must be marked in a uniform manner with ~~((one))~~ the buoy brand number registered ~~((by the license holder))~~ with the department and be of identical color or color combinations, unless otherwise authorized by permit issued from the director.

(ii) A license holder may register only one unique buoy brand and one unique 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.

(iii) It is unlawful for a coastal Dungeness crab fishery ((license holder)) vessel operator to fish for crab using any other buoy brand ((or color(s))) and buoy color or color combinations than those registered with and assigned to the license by the department.

(iv) It is unlawful for a nontreaty coastal Dungeness crab fishery vessel operator to register a buoy brand or fish for crab using a buoy brand used in a treaty tribal fishery.

(v) In the event that a license is transferred to another vessel or owner in the same season, the license holder must reregister the buoy brand and buoy color or color combinations to be used with the license for the remainder of that crab season.

(6) Commercial crab fishery line requirements.

(a) Vessel operators must set all crab pots used in any Dungeness crab fishery ((shall be set up)) to use only the amount of line reasonably necessary to compensate for tides, currents, and weather.

(b) ~~((i) It is unlawful for a)~~ Vessel operators may not use line in any Puget Sound or coastal Dungeness crab fishery that features specific marking or color combinations required by regulation for any other state or federally managed commercial fishery in the U.S. West Coast Exclusive Economic Zone or in the state waters of Washington, Oregon, or California.

(c) Vessel operators fishing or participating in the Washington coastal nontreaty Dungeness crab fishery ((license holder to)) must use line ((that connects the main buoy to the crab pot)) that is ((not)) marked sufficiently to identify it as gear used exclusively in ((the Washington coastal Dungeness crab)) that fishery.

~~((ii) For each shellfish pot used in the Washington coastal commercial Dungeness crab fishery and rigged with line, that line))~~ (i) Line must be marked as red and black. Dual-colored line must be marked through the manufacturing process and is defined as two strands colored red and at least one strand colored black. Tracer line may be used, see compliance guide for acceptable tracer lines (see subsection (6)(c)(iii) of this section).

(A) Through November 30, 2035, line with any of the following sets of solid marks may be substituted for manufactured dual-colored line. A solid mark must cover the entire circumference of the line and

be regularly serviced and maintained in a condition to readily identify the required line marking scheme.

(I) On line of any color, other than red or black, a set of solid marks consists of one solid two-foot red mark spaced at a distance of no more than six inches from one solid two-foot black mark.

(II) On line originally red, a set of marks consists of one solid two-foot black mark spaced at a distance of 12 to 24 inches from a second solid two-foot black mark.

(ii) For each shellfish pot used in the fishery rigged with line, the line must be marked as follows:

(A) Effective immediately, the line connecting the main (diver) buoy closest to the shellfish pot must be marked with no less than 12 continuous inches of red ((in at least two places. At a minimum, 12 continuous inches of line must be marked in red,)) no more than one fathom from the main (diver) buoy ((and no more than one fathom from the pot)). Red and black manufactured line described in subsection (6)(c)(ii) of this section meets this requirement.

(B) Effective December 1, 2025, all line connecting two buoys, except the buoy gangion lines, must be marked with red and black pursuant to subsection (6)(c)(ii) of this section.

(I) For the purpose of this section, buoy gangion lines are defined as a line that passes through and is affixed to the buoy forming loops on each end of the buoy, that are less than four feet long as measured from opposing loop ends.

(II) Through November 30, 2035, one set of solid marks on any line connecting two buoys, except buoy gangion lines, as defined in subsection (6)(c)(ii)(A) of this section may be substituted for dual-colored manufactured line.

(C) Effective December 1, 2028, the line connecting the main (diver) buoy to the shellfish pot must be marked with red and black pursuant to subsection (6)(c)(ii) of this section.

(I) When fishing with 20 fathoms (120 feet) or more of line connecting the main (diver) buoy to the shellfish pot, the top 15 fathoms (90 feet) of line must be marked.

(II) When fishing with less than 20 fathoms (120 feet) of line connecting the main (diver) buoy to the shellfish pot, the top 50 percent of line must be marked.

(III) Through November 30, 2035, on the portion of line connecting the main (diver) buoy to the shellfish pot three sets of solid marks as defined in subsection (6)(c)(ii)(A) of this section may be substituted for dual-colored manufactured line. Sets of marks shall be distributed such that one set of marks is within one fathom of each end and one set of marks is near the middle of the length of line required to be marked.

(iii) The department has published a compliance guide for the line marking which provided additional information and instructions to follow in complying with this regulation and is incorporated by reference herein. The guide can be obtained by contacting the Coastal Shellfish Manager: 48 Devonshire Road, Montesano, WA 98563; phone 360-249-4628; or wdfw.wa.gov/fishing/commercial/crab/coastal.

(7) Coastal commercial Dungeness crab fishery surface gear limitations.

Surface gear is limited to one main (diver) buoy connected closest to the shellfish pot and the following:

(a) Two trailer buoys.

(b) One end marker buoy less than five inches in diameter can extend no more than three feet beyond the last trailer buoy. End marker buoys are not considered trailer buoys.

(c) The maximum distance between the leading edge of the main buoy and the trailing edge of the last trailer buoy, including all line connecting surface gear, must not exceed 36 feet.

(8) Violation of subsection (5), (6), or (7) of this section is a gross misdemeanor, punishable under RCW 77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.