



Oregon

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Oregon Ocean Commercial Dungeness Crab Permit Holders,
Processors, Buyers, and Interested Persons:



The Oregon Department of Fish and Wildlife (ODFW) is sending you this notice to provide you with information regarding whale entanglements on the West Coast and updates on Oregon's efforts to mitigate risk of entanglements in our fixed gear fisheries.

BACKGROUND ON WHALE ENTANGLEMENTS

Since 2014, there has been an increase in the number of reported whales entangled in fishing gear from fixed gear fisheries along the West Coast, primarily in Dungeness crab gear. In some cases, entanglement in fishing gear has led to serious injury and directly caused death of whales. The most recent summary of entanglement information (through calendar year 2017) is available on NOAA Fisheries website:

http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/fisheries_interactions.html. A summary report including the 2018 entanglements will be posted here as well, once it is finalized.

Since 2017, Oregon Sea Grant has been convening a collaborative Oregon Whale Entanglement Working Group (OWEWG). The goal of the OWEWG is to gather Oregon stakeholders together to develop and recommend options for short- and long-term modifications to gear and fishery practices to reduce the risk of whale entanglements in Dungeness crab gear and other fixed gear fisheries.

Materials and proceedings of all of the meetings held to-date are on Sea Grant's website:

<https://seagrant.oregonstate.edu/outreach-and-engagement/Oregon-Whale-Entanglement-Working-Group>.

CALIFORNIA LAWSUIT SETTLED – RESULTS IN EARLY FISHERY CLOSURE

There has been a settlement in the lawsuit brought by Center for Biological Diversity against California Department of Fish and Wildlife (CDFW) over whale entanglements, as of two weeks ago. The lawsuit was filed on the basis that CDFW was causing the take of ESA-listed whales and sea turtles by permitting the Dungeness crab fishery to operate, without an approved Incidental Take Permit (ITP; see more information on ITPs below). A key element of the CDFW settlement agreement is a court-ordered requirement that the California Dungeness crab fishery close on April 15, 2019. This requirement is intended to remove crab gear from California waters, as the migratory ESA-listed species (primarily humpback and blue whales) have arrived along the West Coast for the spring and summer seasons. The settlement agreement measures may result in CA fishery closures earlier than April, in some areas or in some years. The full settlement agreement is located here:

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=166146&inline>.

OREGON EFFORTS TO MITIGATE – SHORT AND LONG-TERM

To reduce the risk of whale entanglements in Oregon, ODFW has been actively working with the OWEWG, researchers, industry, NOAA and the other states to learn about strategies and develop management measures. Whale entanglement risk is not a new issue for the crab industry; we have been distributing information about this growing problem for several years, most recently discussed at ODFW's fall 2018 public meetings and in our 2018 Annual Crab Newsletter, found here:

https://www.dfw.state.or.us/MRP/shellfish/commercial/crab/docs/Crab%20Newsletter_2018_final.pdf. Since the public meetings in fall 2018, ODFW has further developed our plans for recommending whale mitigation management measures in a phased rule-making approach to the Oregon Fish and Wildlife Commission (OFWC). Additionally, we have been in communication with NOAA to initiate the application process for an Oregon ITP, specific to Oregon's Dungeness crab fisheries. Lastly, we are working with researchers to gather better whale distribution data off Oregon.

MANAGEMENT MEASURES – PHASE 1 (2019)

In June (2019), we will brief our Oregon Fish and Wildlife Commission (OFWC) on the increase in whale entanglements, and Oregon's plans to address it. In September 2019, we will recommend the first of two whale mitigation rule-making packages to the OFWC, for implementation at the start of the 2019-20 crab season. This phase will include:

1. **Control date of August 15, 2018 for potential "late season" limited entry fishery** – to limit qualifying landings for any type of late season endorsement or limited entry fishery to landings before August 15, 2018, should an endorsement be needed at some point in the future.
2. **Mandatory electronic tickets for all crab landings, including harvest areas** – to improve timeliness of vessel harvest locations to inform crab effort and whale overlap throughout the season; additionally, this will be used for biotoxin management.
3. **Buoy color and pattern registration** – to improve our understanding of where and when entanglements occur.

Also for the season start, and complementary to the regulatory package above, you will notice we are moving to **double-sided buoy tags for the 2019-2020 season**, another mechanism to improve our understanding of entanglement events.

MANAGEMENT MEASURES – PHASE 2 (2020)

In 2020 (Feb/Mar), we will recommend the second of two whale mitigation rule-making packages to the OFWC, with an additional set of measures for implementation in-season, as early as spring 2020. At this time, we intend the regulatory package to include the management measures listed below, which would be applied to the **"late season" (the timing of which is yet to be defined) when feeding aggregations of whales are known to be more prevalent in waters off Oregon.** We will host industry public meetings during fall 2019, to describe our draft recommendations, and gather further input on how and when to implement these measures.

1. **"Late season" reduced pot limit** – to reduce the number of actively fished vertical lines that pose a risk of entanglement; this could be done by implementing a maximum number of pots per permit, a percentage reduction of pots per permit, or other measures.
2. **"Late season" buoy tag** – to enforce the reduced pot limit, facilitate earlier derelict gear clean up, and learn more about the timing of entanglements.
3. **Initiate "late season" derelict gear removal, once the regular season ends** – to reduce the amount of derelict vertical lines that pose a risk of entanglement. This measure will require legislative change.
4. **Eliminate the two-week gear clean-up period after the season ends** – to shorten the timeframe that vertical lines are in the water and pose a risk of entanglement.

MANAGEMENT MEASURES – FUTURE PHASES (timeline TBD)

As we continue to work on mitigating whale entanglement risks, there will likely be a need to consider additional measures. At this time, we think it is likely we will need to develop the following requirements:

1. **Near-real time vessel monitoring requirement** - to provide real-time vessel harvest locations to inform crab effort and whale distribution overlap throughout the season, as well as information to verify reporting of biotoxin management harvest areas.
2. **“Late season” limited entry** – to reduce the potential for effort increase that poses a risk of entanglement when feeding aggregations of whales are known to be more prevalent in waters off Oregon. Qualifying landings for this limited entry system would be set by the control date decision made by the OFWC in September 2019.

OREGON INCIDENTAL TAKE PERMIT (ITP) APPLICATION

Because Oregon’s Dungeness crab fishery is at risk of entangling ESA-listed species, and because an ITP is required for the incidental take of ESA-listed species, ODFW is applying for an ITP from NMFS. Earlier this year (March, 2019) we met with NMFS staff regarding the process and considerations for submitting an ITP application for the fishery. The key component of the ITP application is the development of a Habitat Conservation Plan (HCP), which outlines the management measures that the applicant (ODFW) will take to minimize and mitigate the authorized incidental take of ESA-listed whales by the crab fishery. The management measures we have outlined above will be part of the ODFW application to NMFS, however, there is no guarantee up-front that the ODFW management measures will be sufficient to address the “minimize and mitigate” requirements set by NMFS. NMFS will work with ODFW throughout the HCP process to come to agreement on the management measures included, at which point there will be a formal review and decision by NMFS. We have formalized our intent to apply for an ITP through a letter to NMFS which can be found here:

https://www.dfw.state.or.us/MRP/shellfish/commercial/crab/news_publications.asp. This will be an extended process that may take multiple years to complete; we will seek industry input and provide industry updates as this process proceeds. For more information on ITPs see: <https://www.fws.gov/endangered/permits/index.html>.

OREGON WHALE DISTRIBUTION RESEARCH

We are working in collaboration with Oregon State University’s Marine Mammal Institute on a project to better understand whale distribution, migration timing, and habitat use of whales off Oregon. This information will help us continue to make informed and discrete decisions about management of the crab fishery that maximize effectiveness of protecting whales while minimizing burdens to the industry. Details of this project can be found here <https://mmi.oregonstate.edu/gemm-lab/where-are-whales-oregon-waters>. The first six months of the project has been funded by the Oregon Dungeness Crab Commission (ODCC) and we are waiting to hear a determination of approval on a section 6 grant proposal to NOAA for additional funding of the project.

WHAT CAN I DO NOW?

In addition to supporting the activities that are described above to minimize and mitigate whale entanglement risk, there are concrete steps the crab fishery can take right now to protect whales from entanglements and thereby help maintain the viability of the fishery. Any time that you have crab pots in the ocean, we encourage you to **help minimize the risk of whale entanglements by:**

- a. **Reducing the amount of lines in the water** and remove all your gear as soon as you have completed your crab season. Do this as quickly and efficiently as possible (avoid “storing gear” in the ocean for any length of time). If your vessel is unable to actively operate and you still have crab pots in the water please contact ODFW licensing 503-947-6116 about

applying for a one-time retrieval waiver to allow another vessel to help get your pots out of the water as soon as possible.

- b. **Retrieve derelict, lost or stray pots**, in accordance with derelict gear recovery rules (OAR 635-005-0490), and make sure to record the information in your logbook according to the instructions. (See information on the post-season program, below).
 - Please remember that it is unlawful at this time to stop transit of the Rockfish Conservation Area (RCA), even to pick up derelict gear, when on a declared bottom trawl or fixed gear groundfish fishing trip.
- c. **Implement best fishing practices** in the configuration and deployment of gear as described in OWEWG best practices directive located here https://www.dfw.state.or.us/MRP/shellfish/commercial/crab/docs/owewg_2018-2019_bestpracticesdirective.pdf.
- d. **Sign-up and participate in the permitted post-season derelict gear program** to retrieve derelict and stray pots still in the ocean after the season ends. See details about how this program operates and the requirements to participate located here <http://www.dfw.state.or.us/MRP/shellfish/commercial/crab/psdgrp.asp>.
- e. **Help collect information about whales off Oregon** by documenting whales while you are out on the water. More information on a user-friendly phone apps to make it easier to document whale-sightings will be available on this website soon <https://mmi.oregonstate.edu/gemm-lab/where-are-whales-oregon-waters>.

ODFW is committed to making informed, deliberate and transparent decisions to mitigate the risk of whale entanglements with the Dungeness crab fishery. We believe in earnest the continued awareness, work, research and discussions towards addressing this issue on multiple fronts will strengthen the ability of Oregon's Dungeness crab fishery to adapt and thrive under changing ecological and socioeconomic conditions. We look forward to working with you collaboratively, to address this problem.

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