

Agenda Item Summary

BACKGROUND

This exhibit addresses three distinct issues related to Oregon commercial and recreational fisheries: (1) regulations implementing an initial phase of whale entanglement mitigation measures; (2) regulations implementing crab biotoxin management measures; and (3) regulations implementing crab season opening measures. While most staff recommendations contained herein only affect commercial Dungeness crab fisheries, recommendations related to whale entanglement mitigation are also made for other commercial fixed gear fisheries and the recreational crab fishery.

The Oregon Dungeness commercial crab fishery is, on average, Oregon's most valuable single-species commercial fishery, accounting for up to forty percent of all commercial landings (ex-vessel value) each year. The commercial Dungeness crab fleet is diverse, with vessels ranging from small dories making day trips to large vessels that can remain at sea for days or weeks that may deliver over 50,000 pounds of crab from a single trip. An active and vibrant recreational crab fishery contributes to Oregon's coastal tourist economy through expenditures at hotels, bait and tackle shops, gas stations, and for guided crabbing trips.

While the commercial Dungeness crab fishery operates both in state (0-3 nm) and federal (3-200 nm) waters, management authority for the U.S. West Coast fishery is delegated to the states of Washington, Oregon and California through specific provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Management has been largely stable over the history of the fishery, consisting primarily of restrictions on size, sex, and season of harvest. From the mid-1990's through 2006, management of the commercial fishery was transformed by several actions including: implementation of a limited entry permit system, which restricted the number of vessels; the Pre-Season Testing Protocol for the Tri-State Coastal Dungeness Crab Commercial Fishery, which established crab quality criteria for opening the season; and pot limits that restricted the number of crab pots each permitted vessel could fish. More recently, a number of management challenges related to changing ocean conditions have emerged across the entire U.S. West Coast fishery. These challenges include increased interactions with protected species such as humpback whales, increased frequency and duration of Harmful Algal Blooms that produce biotoxins leading to concerns about human health effects, and changes in the timing of molting of crabs, which affect quality and marketability at the beginning of the season.

This exhibit recommends regulatory changes for the Commission's consideration that address each of these emerging issues.

Whale Entanglements in Fishing Gear

Whale populations in the United States are protected, assessed, and managed by the federal government under the Marine Mammal Protection Act (MMPA) for all species, and additionally under the Endangered Species Act (ESA) for threatened or endangered populations. Interactions between large whales and fishing gear have been documented as a

contributors to human-caused injury and mortality of large whales on the West Coast, including fishery gear that has been definitively linked with West Coast and Oregon commercial Dungeness crab fisheries.

Management measures are recommended here to ensure that whales and fisheries can co-exist and that fisheries remain in compliance with federal and state laws; measures include those to learn more about entanglements (informational measures) and those to reduce the risk of entanglements.

This regulatory package focuses on informational measures, and precedes a planned regulatory package for Commission deliberation early in 2020 that will focus on reducing the risk of entanglements.

Biotoxin Management

Management of human health risks from biotoxin events affecting seafood involves multiple agencies at the state and federal level. The U.S. Food and Drug Administration (FDA) sets action levels for human health and safety that are implemented by states. The Oregon Department of Agriculture (ODA) is responsible for testing fish and shellfish for biotoxins, issuing health advisories, and conducting recalls or embargoes of affected products. ODFW is responsible for opening and closing fisheries, and has authority to establish record keeping requirements for commercial vessels, seafood wholesale, and seafood retail businesses.

Oregon has experienced several years of crab fishery disruptions and delays due to the elevated levels of domoic acid in crab viscera. Domoic acid is a naturally occurring biotoxin that poses a significant human health risk. Domoic acid events have periodically occurred in Oregon; however, the West Coast has experienced strong biotoxin events each year since 2015. In response, ODA and the Department convened the 2017 Dungeness Crab and Biotoxins Rules Advisory Committee (RAC). The RAC recommended a series of specific actions (Attachment 1) that centered around three key objectives: minimizing management response time after biotoxin detection in crabs, expanding public communication tools, and strengthening the regulatory framework to support improved public safety. Many of the RAC recommendations have been implemented by the Commission, Department, and ODA through legislation, agency rulemaking, and non-regulatory communication enhancements. However, RAC recommendations for tracking crab harvest areas on fish tickets and requiring electronic fish tickets for crab landings have not yet been implemented, because they required information systems development. The systems development process was recently completed and the Department now recommends implementation of these RAC recommendations.

Season Opening

The commercial ocean Dungeness crab fishery off Oregon is managed in cooperation with the states of Washington and California through the Tri-state Dungeness Crab Committee (Tri-state Committee), which is convened by the Pacific States Marine Fisheries Commission (PSMFC). The Tri-State Committee is made up of a representative of each state's fish and wildlife agency, advised by six members of industry from each

state, and it agrees to a set of standardized pre-season testing protocols and season opening criteria and modifies, as needed. Collectively, the protocols and criteria are known as the Pre-Season Testing Protocol for the Tri-State Coastal Dungeness Crab Commercial Fishery (Protocol), which was first adopted in 1993. Modifications of the Protocol are made as needed, and a new signed agreement is now recommended for incorporation into Oregon Administrative Rules. The changes include measures to build more flexibility into season opening dates to optimize for meat quality and manage biotoxin threats.

PUBLIC INVOLVEMENT

Department staff have informed, discussed with, and solicited input from stakeholders in the development of this package of recommended regulatory changes through a variety of methods. These have included:

Oregon Whale Entanglement Working Group – Beginning in May 2017, Oregon Sea Grant convened a collaborative Oregon Whale Entanglement Working Group (OWEWG). The working group consisted of representatives of Oregon’s commercial fixed gear fishing fleet (crab and sablefish), a recreational crabber, a whale disentanglement specialist, a fishing gear expert, an Oregon State University marine mammal expert, Non-Governmental Organizations, the Oregon Dungeness Crab Commission (ODCC), and Department staff. The OWEWG’s goals were to develop and help prioritize 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. In winter 2017 and spring 2018, the OWEWG sent all Dungeness crab permit holders a survey to gather fleet-wide input about concerns regarding whale entanglements, a voluntary set of fishing guidelines developed by the OWEWG, and management options developed by the OWEWG to reduce risk of entanglement. Utilizing input from the survey, the OWEWG developed preliminary recommendations, focused on improving information about entanglements as well as management options to reduce risk. The OWEWG has served as both a collaboration and a public input opportunity for Department staff regarding the fishery and practices to best protect whales.

Summarized results from the survey, the voluntary set of fishing guidelines, and proceedings of all of the meetings held to-date are all on Sea Grant’s website at <https://seagrant.oregonstate.edu/whale-entanglement>.

Dungeness Crab and Biotoxins Rules Advisory Committee (RAC) – In the summer of 2017, Oregon Department of Agriculture (ODA) and the Department co-convened a RAC that was comprised of 11 industry members, including crab buyers, processors, and harvesters from each of Oregon’s 6 primary crab ports. Oregon State Police Fish and Wildlife officers also participated. The purpose of the RAC was to develop recommendations on administrative rules, statutes, and non-regulatory measures to mitigate impacts of biotoxin events on the Dungeness crab

fishery. The RAC met three times to develop recommendations and a public hearing was held to get input on both agencies' proposals for new regulations. In April 2018, the Department proposed and the Commission adopted permanent enhanced record keeping requirements, per the RAC recommendations (Attachment 4), but additional rulemaking is needed to implement other RAC recommendations.

Public Meetings – In October 2018, Department staff hosted a series of four commercial crab industry public meetings, held in the major crabbing ports of Brookings, Charleston, Newport, and Astoria. The purpose of the meetings was to discuss and get industry input on current management issues concerning the commercial Dungeness crab fishery that included all the issues addressed in this exhibit. Staff from National Oceanic and Atmospheric Administration (NOAA) Fisheries (whale entanglement experts) and Oregon State Police (OSP) Fish and Wildlife officers participated in presenting information and discussions.

In July 2019, Department staff hosted a public meeting in Newport to get public input on potential requirements for recreational crab gear marking.

Industry Notices – Department staff have mailed multiple industry notices to all commercial crab permit holders and crab buyers to provide updates and information about all three issues in this regulatory package, solicit input on specific management measures, and communicate the Department's intent to bring these items before the Commission in September 2019 (Attachment 5).

Annual Crab Newsletter – Department staff have produced an annual crab newsletter for the commercial Dungeness crab industry since 2007. The purpose of the newsletters is to share current information about the fishery, monitoring and research efforts underway, upcoming management changes, and current issues. In recent years both whale entanglement and crab biotoxin management have been prominently featured to raise awareness within the industry about these issues, the Department's plans for managing them, and how to provide input. All newsletters are posted here:

https://www.dfw.state.or.us/MRP/shellfish/commercial/crab/news_publications.asp

Tri-State Dungeness Crab Committee meeting – Department staff, along with five Oregon industry representatives, met with Washington and California delegations at a Tri-State Committee meeting in May 2019, which was open to the public. Discussions centered around building more flexibility into the season opening protocols, information sharing, and coordination of whale entanglements risk reduction measures, development of Incidental Take Permit (ITP) applications, and striving for consistency in crab biotoxin management. ODA staff and OSP officers participated in these meetings.

Oregon Dungeness Crab Advisory Committee (ODCAC) – The Department has a standing industry advisory body to foster industry input on commercial crab management decisions, a subset of which also represent industry at Tri-State meetings. The group is comprised of harvesters and processors from all of the major crabbing ports in Oregon. Participation is voluntary and the Department strives to have representation of all sectors of the industry by including persons from all ports, pot limit tiers, vessel sizes, and a diversity of business plan types. ODA, OSP, and ODCC staff often participate in advisory meeting discussions, which are also open to the public. The ODCAC was consulted for various aspects of all three issues in this regulatory package.

Oregon Fish and Wildlife Commission Director’s Report Briefing – Department staff briefed the Commission at the June 6, 2019 meeting. This briefing included background information about whale entanglements on the West Coast, summary of existing regulations in Oregon that reduce entanglement risk, the Oregon Whale Entanglement Working Group’s (OWEWG) preliminary recommendations, and the Department’s recommendation to implement regulations to improve information on entanglements and further reduce risks in a phased approach.

Surveys – Department staff queried recreational crabbers about their current habits with marking gear and their support for the recommended marking requirements. Staff conducted surveys at one science event, one sportsman event, and through interviews in conjunction with recreational crab fishery sampling.

In addition to these formal outreach methods, Department staff have also answered numerous calls, emails, and in-person communications regarding various aspects of all of the proposed regulatory changes and have considered input received in developing these recommendations for permanent rule. Department staff has also regularly attended ODCC meetings to provide updates on the proposed regulations.

ISSUE 1

WHALE ENTANGLEMENT MITIGATION MEASURES

ANALYSIS

Increases in rates of whale entanglements

Since 2014, there has been an increase in the number of reported and confirmed whale entanglements in fishing gear from fixed gear fisheries along the West Coast (Figure 1). In some cases, entanglement in fishing gear has led to serious injury and mortality of whales. All whale populations are protected, assessed, and managed under the U.S. Marine Mammal Protection Act (MMPA), and some have additional protections under the U.S. Endangered Species Act (ESA).

Because of the sharp increase in entanglements, NOAA Fisheries has published annual summaries of large whale entanglements that can be found here: <https://www.fisheries.noaa.gov/resource/document/2018->

[west-coast-whale-entanglement-summary](#). NOAA suggests that the increase of entanglements in recent years is due to a combination of factors including changes in the distribution of whales and their prey, changes in fishing patterns, and increased public reporting.

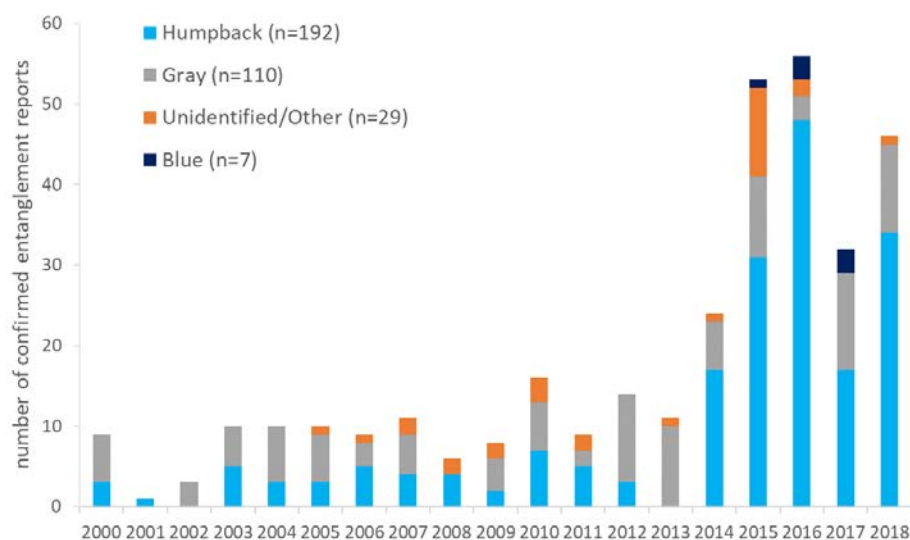


Figure 1. Confirmed large whale entanglements with fishery gear for West Coast states (California, Oregon, Washington). While gray whale entanglements have remained low and relatively consistent overtime, a large increase in humpback whale entanglements occurred starting in 2014. Also of note is the first appearance of blue whale entanglements in 2015.

Large whales that utilize Oregon waters

The West Coast a significant component of the feeding grounds for many large whale species including the commonly seen gray and humpback whales, as well as the more rarely seen fin, minke, sperm, blue, and other whale species. Of the large whale species, three have been confirmed in fishery gear entanglements: gray, humpback, and blue whales. All three have unique population characteristics and protections under the MMPA, and at least some population segments of all three have additional protections under the ESA.

Humpback whale populations in Oregon waters

During spring and summer months, Oregon is the targeted feeding grounds for some groups of migrating humpback whales (*Megaptera novaeangliae*). The most recent Stock Assessment Report (SAR) for humpback whales defines those animals occurring off California, Oregon, and Washington as a single stock (the CA/OR/WA stock) with an estimated population size of 2,900 whales (Carretta et al., 2019). Some humpback whale populations are also listed under the ESA; the ESA distinguishes these populations based on their affiliation with breeding ground locations. Of the humpback whales that forage on the West Coast,

there are three breeding populations, described as Distinct Population Segments (DPSs) including the Hawaii population (11,000 animals; not listed), Mexico (2,800 animals; ESA-threatened) and Central America (780 animals; ESA-endangered). Humpbacks seen in California and Oregon waters are estimated to be entirely comprised of animals from the threatened Mexico population and endangered Central America population (Carretta et al., 2019).

Humpback whales have been the most common species reported as entangled in recent years (2015-present) across the West Coast and the increased rate of entanglements overall is almost entirely due to increased entanglements of these whales.

Gray whale populations in Oregon waters

Currently, there are two stocks of gray whales (*Eschrichtius robustus*), as defined under the MMPA: the Eastern North Pacific (ENP) and the Western North Pacific (WNP). The ENP stock of gray whales is the most prevalent stock off the West Coast and migrates twice a year along the coast travelling from to and from winter breeding grounds in Mexico to summer feeding grounds off Alaska. The size of the ENP stock is estimated at about 27,000 whales (Carretta et al., 2019), has recovered under MMPA and ESA protections, and was delisted in 1994.

Within the ENP stock, there is a small group that feeds in coastal waters of the Pacific Northwest during the summer months called the Pacific Coast Feeding Group (PCFG). Although the estimated population size of the PCFG is estimated to be much smaller (243 whales; Carretta et al., 2019) it has not been declared a demographically-independent stock.

The WNP stock is designated as a DPS under the ESA, with an estimated population size of 290 whales (Carretta et al., 2019) and is currently listed as endangered under the ESA. While the WNP stock primarily occurs along the coast of East Asia, recent tagging, photo-identification, and genetic studies have shown there is movement of individual whales between the western and eastern North Pacific. However, gray whales remain designated as separate stocks or populations in the MMPA and ESA at this time.

While there has been some variation from year to year, West Coast observations of gray whale entanglements have been relatively low and constant over time.

Blue whale populations in Oregon waters

The West Coast is one of the most important feeding areas for the Eastern North Pacific (ENP) stock of blue whales (*Balaenoptera musculus musculus*) in the summer and fall. The best estimate of population size of the ENP is 1,647 whales. All blue whale populations globally are listed as endangered under the ESA.

Confirmed entanglements of blue whales have been documented on the West Coast in three of the past four years, but none have been confirmed with gear from Oregon fisheries to date.

Attributing fishery gear type to West Coast whale entanglements

Each observed entangled whale is carefully documented, evaluated, and analyzed to glean information on the origin of the gear involved. Despite this effort, more than half of the gear observed and/or recovered in recent years from West Coast whale entanglements has not been attributable to a specific fishery and area. This information is being used to design recommendations on how to prevent entanglements, so accurate information about every entanglement is essential for creating effective changes in fishing practices to protect whales. A quarter of recent entanglements have been confirmed as commercial Dungeness crab gear (Figure 2).

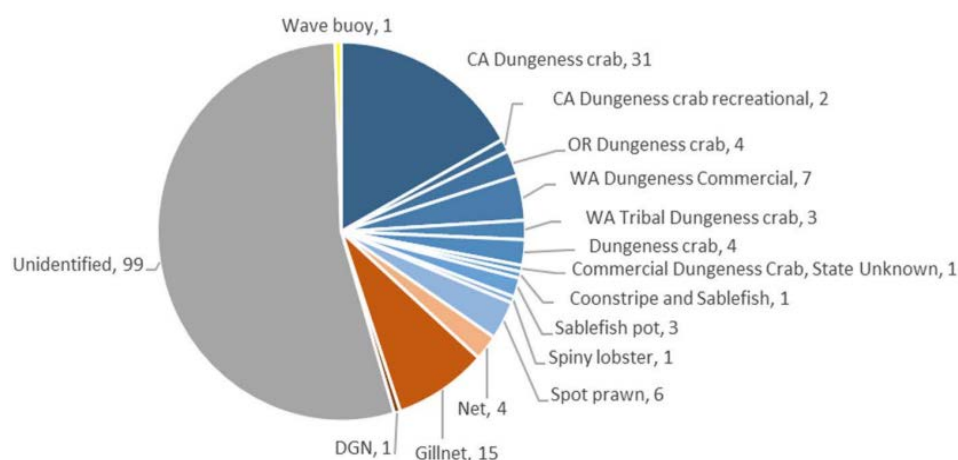


Figure 2. Attributions of large whale entanglements to presumed fishing activities (lines, buoys, and pots) from January 2013 to May 2018. More than 50% of the confirmed entanglements over this time period are from unidentified presumed fishing gear (gray), approximately 35% are from pot and trap fisheries (shades of blue) and approximately 10% are from nets (shades of orange). NOAA, 2018.

While reports of entangled whales originate from all along the West Coast, most have originated from central and southern CA in recent years (NOAA, 2018). Some of the entangled whales reported in California waters have been entangled with gear from Oregon or Washington fisheries, as identified by buoy tags. Entangled whales have been reported in all months of the year, with some increase in April, May and August (NOAA data, 2019). However, whales can carry entangled gear for months and travel long distances before they are observed, so the place and time of entanglement reports do not necessarily reflect the place and time that the whales encountered the gear (NOAA, 2018).

Based on the increased rate of ESA listed humpbacks confirmed entangled in California Dungeness crab gear (Figure 2) and the lack of California management measures to address the growing conservation

concerns, the California Department of Fish and Wildlife (CDFW) was sued over their management of the Dungeness crab fishery. The lawsuit was settled out of court through a signed agreement between the plaintiffs and CDFW in March 2019. The legal deliberation surrounding the lawsuit has raised awareness about the need and opportunities for improving large whale protections in fixed gear fisheries across the West Coast.

Oregon commercial Dungeness crab gear and whale entanglements

Over the 17 year time period from 2003-2019, there have been 12 whale entanglements attributed to Oregon commercial Dungeness crab gear (Figure 3). Half of these have been entanglements with ESA listed humpback whales, the remainder have been with gray whales. The observations have come from waters across the West Coast (Washington to Mexico), indicating that whales entangled in Oregon waters can travel great distances before being observed and documented. The observations of whales entangled in Oregon gear have occurred from April-October, with April and May having the highest number of reports.

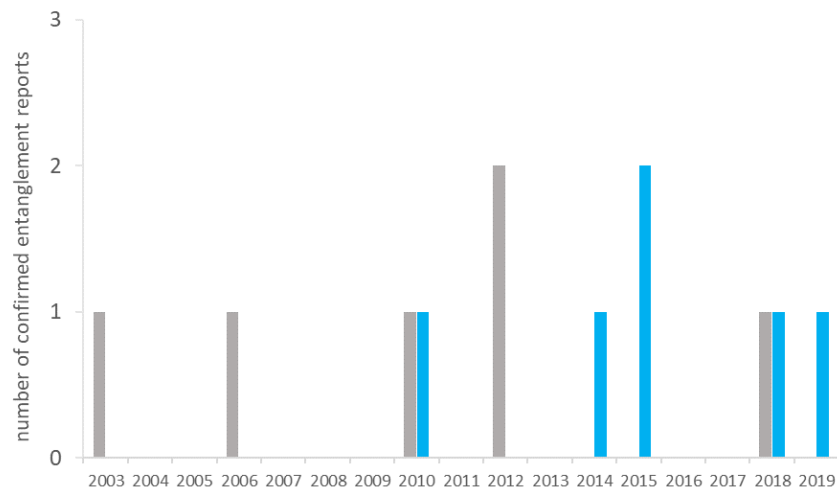


Figure 3. Confirmed whale entanglements that are attributable to Oregon commercial Dungeness crab gear. Of the 12 confirmed entanglements, half are humpback whales (blue bars), and half are gray whales (gray bars). Most of the recent confirmed entanglements are of humpback whales. Data for 2019 are preliminary. NOAA data, 2019.

Management Measures

Department staff has been actively working with many different entities on multiple fronts to develop management measures to reduce the risk of whale entanglements in Oregon fishing gear. These have included the commercial crab industry, OWEWG, NOAA Fisheries, Pacific States Marine Fish Commission, Washington Department Fish Wildlife, California Department Fish and Wildlife, and marine mammal, disentanglement, and gear experts.

Through these efforts, Department staff has developed recommendations for phased implementation of management measures. This package of proposed changes is Phase 1, and is focused on measures to learn more

about each entanglement by increasing accountability of fishing gear and activities in Oregon. The Department staff plan to bring Phase II measures to the Commission early in 2020, which will focus on reducing the risk of entanglements.

As described in Figure 2, over 50% of confirmed entanglement events cannot currently be attributed to gear from a particular fishery or location of entanglement (Figure 2). From NOAA Fisheries' most comprehensive review of entanglement events (2013- mid-2018; n=183 confirmed entanglements), nearly three-fourths of reports included buoys; however, nearly half of these events with buoys could not be attributed to a specific fishery. Commercial Dungeness crab buoy tags were only seen on 38% of entanglements where buoys were observed.

Broadly, gear marking and registration requirements are being recommended in this package to improve our ability to attribute whale entanglement to a particular fishing gear type and location among West Coast fixed gear fisheries. Specifically, Department staff recommend the following Phase 1 whale entanglement informational measures:

1. Require registration of buoy color patterns for commercial crab buoys (OAR 635-005-0480)

This will require all commercial ocean and Columbia River buoy color patterns to be registered with the Department; this augments existing requirements to register buoy brand number. Registration will require submission of an electronic or printed photo of the buoy color pattern. Re-registration would only be required if the vessel changes buoy color patterns and will not require color patterns to be unique. It will require that vessels use at least one buoy with the registered buoy color pattern on each piece (pot or ring) of Oregon Dungeness crab gear, which is standard industry practice. This measure will aid identification of ocean Dungeness crab gear involved in whale entanglement events where buoy tags are not visible or readable.

2. Require identification markings on additional classes of commercial fixed gear buoys (OAR 635-004-0215, 635-004-0235, 635-005-0240, 635-005-0275, 635-005-0510, 635-006-0001)

Identification markings are currently required for buoys used in most commercial fisheries, including ocean and Columbia River Dungeness crab gear, hook-and-line fixed gear (e.g., bottom longline, vertical hook-and-line), and longlined pot gear. However, there is not a clear requirement for identification markings on individually buoyed pot gear used in other commercial fisheries. This measure will require identifying information on buoys utilized in all commercial fixed gear fisheries where it is not already required. Identifying information may be boat name, federal documentation number, state registration number, or commercial fishing license number, similar to current requirements for longlined pot gear. The commercial bay crab fishery will be the largest amount of gear affected by this regulation with 82 boats participating in the fishery over the past three years. Outside of

crab, single-buoyed gear is currently used by only a handful of commercial vessels in the ocean for commercial harvest of species such as octopus and coonstripe shrimp. While these are low volume and effort fisheries, this measure will allow identification of all commercial fixed gear involved in whale entanglement events.

3. Require identification markings on recreational crab buoys
(OAR 635-039-0090)

Although gear marking has been required in California and Washington there are no requirements for identification on recreational crab buoys in Oregon. This measure will require all recreational crab gear buoys to be marked with a name or business name and at least one of the following: permanent address, phone number, angler ID, or boat registration number. This measure will aid identification of any recreational gear involved in whale entanglement events.

In preparation for potential future rule making by the Commission, staff also recommend that the Commission establish a “late season” limited entry control date.

4. “Late Season” Limited Entry control date
(OAR 635-005-0455)

The later months of the ocean commercial crab season (spring and summer) are when there is an increase in whale feeding aggregations off Oregon, and when entanglements have been most often reported. While specific measures are still in development, it is possible that a future management measure could include limitations on fishing effort in these later months. In situations when a limited participation program is being considered, there can be related effort shift into the affected area or time period, in order to increase the likelihood of that individual qualifying for the future limited entry permit. Control dates signal to the industry that fishing activity after a certain date will not be considered in qualifying criteria, reducing the motivation for the “prospecting” response. The action recommended here is to establish a control date of August 14, 2018. The effect of the control date would be that only landings prior to that date would be considered in qualifying criteria considered during development of any future limit on participation in the late portion of the crabbing season.

This measure will have no immediate impact on industry since there is no recommendation here on changing the Dungeness crab limited entry program at this time. No new restrictions will be placed on participation from adopting the control date alone. Future discussions will be needed to determine whether or not to pursue late season effort limitation as an entanglement risk minimization measure, as well as the details of how participation would be limited. These topics will be the subject of scheduled public meetings in fall 2019.

Measures recommended under Issues 2 and 3 of this exhibit, while designed for other management purposes, will also help provide information on and reduce risk of whale entanglements. These measures will increase accountability, provide more real-time information about fishing activity that might overlap with whale aggregations (electronic tickets with harvest areas), and improve management tools used in Oregon and the Tri-State region for refined spatial management of crab fisheries.

All of these measures were included in OWEWG's preliminary recommendations and measures 1-3 were largely supported at commercial crab industry public meetings. Through dockside surveys, Department staff found that 89% of surveyed recreational crabbers already mark their buoys with some identifying information and were supportive of at least one option for marking their gear. Lastly, although a late-season limited entry program has limited support from the commercial crab industry at-large, the Department recommends adopting a control date at this time so that the additional effort reduction tool can be viable option for consideration.

ISSUE 2

CRAB BIOTOXIN MANAGEMENT MEASURES

ANALYSIS

As described in the Background section, above, Oregon has implemented many of the management measures recommended by the crab biotoxin rules advisory committee (RAC) that was convened in 2016. To continue to address the RAC objectives, Department staff now recommend the following measures:

1. Require electronic fish tickets for all commercial crab landings (OAR 635-006-0001, 635-006-0210 and 635-006-0213)

This would require wholesale fish dealers and limited fish sellers to use electronic fish tickets for any legal landings of crab and submit entries by the end of the next business day after a landing is made. Currently, both paper and electronic tickets are accepted for crab landings and required to be submitted within five working days. Sixty-seven percent of fish dealers that purchased crab in the 2018 calendar year (includes both ocean and bay landings) were already utilizing electronic fish tickets. As of July of the 2018-19 ocean crab season, 72% of fish dealers were utilizing electronic fish tickets. This regulation would also require dealers to document harvest areas on the electronic fish tickets.

Overall, this measure will improve efficiency and effectiveness of, and compliance with, recalls, embargoes, closures, and/or evisceration orders implemented due to biotoxin events by making near real-time data on harvest location for each fishing vessel and fish dealer available in a centralized Department database. Additionally, near-real time harvest location information will be a useful tool to help inform whale entanglement mitigation measures moving forward.

2. Auto-adoption of in-season evisceration requirements and closures OAR 635-005-0466

Currently, the Department and ODA must adopt temporary rules to implement evisceration requirements for the commercial crab fisheries when domoic acid is above FDA action level in the viscera and low or non-detectable levels in the meat, which for the 2018-19 season occurred on three separate occasions. Under existing ODFW rules, closures of the recreational fishery are automatic under these conditions and do not require temporary rules (OAR 635-039-0900). The proposed measure would eliminate the need for Department staff to adopt temporary rules to implement evisceration requirements for the commercial crab fisheries experiencing a biotoxin event, however the Department would retain the option to close the fishery by temporary rule if that were more desirable than implementing an evisceration requirement. ODA is also pursuing auto-adoption of evisceration requirements for the commercial crab fishery to reduce the need for in-season temporary rules by their agency.

The FDA action levels also require fishery closure when domoic acid in crab meat exceeds 20 ppm. This proposed measure would also automatically adopt a closure for the affected harvest areas when domoic acid is above the FDA levels in crab meat in those areas. Temporary rules regulating gear removal and transiting closure areas would still be required if a closure occurred.

These proposed changes, in combination with the efforts already implemented, will allow the agencies to implement management decisions more efficiently, allow industry to respond quickly to management decisions, and continue to strengthen the protection of public health while minimizing fishery disruptions and economic impacts. Crab industry members have been largely supportive of measures that continue to enhance the traceability of crab through the market chain in order to maintain and strengthen the confidence that crab harvested from Oregon waters are safe for consumption.

ISSUE 3

COMMERCIAL CRAB SEASON OPENING MEASURES

ANALYSIS

Discussions at this year's Tri-State meeting centered around building flexibility into the season opening protocols, information sharing and coordination of whale entanglements risk reduction measures in Dungeness crab gear, and striving for consistency in crab biotoxin management. The Tri-State Dungeness Crab Committee agreed to modify the Pre-Season Testing Protocol to allow two management measures that will allow more flexibility with season opening dates and areas, within the Tri-State region, as described below. These changes have been incorporated into Attachment 6, and signed by all three states. In addition, the Department recommends adopting rule language to clarify the application of "fair start" provisions in the protocol.

These modifications to the Protocol include:
(OAR 635-005-0465)

1. Allow more than two areas with different opening dates to be established within the Tri-State region based on crab quality

Previous Tri-State agreements have limited the number of separate area openings to two, and multiple openings are considered when low meat quality test results indicate that crab in a portion of the Tri-State region do not have marketable crab. The areas are used to specify “fair start” protections for those who choose to wait for the future opening. Quality criteria must be met at all sampling sites across an area to open. The new Tri-State agreement would allow establishment of more than two areas, which will presumably lead to earlier openings in smaller areas where crab quality has met criteria. Areas are not delineated in the agreement, but are decided upon during the season opening decision process conducted collaboratively with industry and the other two states. Flexibility in strategically opening discrete areas for harvest is intended to provide a management tool that can be applied to adapt to biotoxin and whale entanglement issues.

2. Allow moving the latest season opening date to February 1, in some situations

The prior agreement’s latest date for opening the fishery was January 15, and this delay was implemented only when the meat yield was low (criteria defined in the protocol). The change in this year’s agreement is to extend the latest date for opening to February 1 for years when meat quality is still less than 23% and, as long as there are no other concerns from managers or industry about delaying longer, such as elevated risk of whale entanglements or biotoxin events.

If adopted into rule by the Commission, Oregon and Washington intend to implement both changes for the 2019-20 season. However, implementation of the measures will take longer for California, because legislation is required for these rule changes. A complete summary of agreements made at the 2019 Tri-State meeting is on the Pacific States Marine Fish Commission’s website at <http://www.psmfc.org/crab/>.

The intent of these changes is to increase the per-pound value of crab, and allow crabbers to fish as soon as possible in areas where crab have met quality criteria. Both measures were widely supported in feedback received during the Department’s industry public meetings in October 2018 and preparatory Tri-State ODCAC conference call in May of 2019.

In relation to the Tri-State agreement staff also recommends:

3. Clarifying definition of “fishing” in relation to “fair start” regulations and align with WA and CA regulations

(OAR 635-005-0465)

The current definition of fishing does not clearly include or exclude some activities such as setting pots for another vessel (aka “barging”). When a “fair start” period is implemented a vessel that fished in an early-opening area cannot fish in a delayed area until 30 days after the delayed area opens. It is currently unclear whether setting pots subjects a vessel to fair start regulations. The Department recommends clarifying this by establishing a definition of “fishing” that is specific to fair start regulations. This change will make it clear that setting pots for another vessel will not be considered fishing.

There are no known impacts to industry as there would be no change to the current interpretation of regulations. The clarifying language has been adopted via temporary rule for the past two season openings and there have been no unintended consequences that we are aware of to date. This measure will reduce staff time for ODFW and OSP by more clearly defining which activities subject a vessel to fair start regulations.

OPTIONS

ISSUE 1 – WHALE ENTANGLEMENT MITIGATION

1. Adopt staff recommendations for whale entanglement mitigation measures as described in Attachment 3.
2. Make modifications to staff recommendations.
3. Status quo.

**STAFF
RECOMMENDATION**

Option 1

OPTIONS

ISSUE 2 – CRAB BIOTOXIN MANAGEMENT

1. Adopt staff recommendations for crab biotoxin management measures as described in Attachment 3.
2. Make modifications to staff recommendations.
3. Status quo.

**STAFF
RECOMMENDATION**

Option 1

OPTIONS

ISSUE 3 – COMMERCIAL CRAB SEASON OPENING

1. Adopt staff recommendations for crab season opening measures as described in Attachment 3.
2. Make modifications to staff recommendations.
3. Status quo.

**STAFF
RECOMMENDATION**

Option 1

DRAFT MOTION	I move to adopt staff recommendations to OAR's as proposed in attachment 3.
EFFECTIVE DATE	Upon filing