

Exhibit (C)

Reducing Risk of Whale Entanglement in Commercial Crab Fishing Gear and Biotoxin Management

**Supplemental
Public Correspondence received
as of September 9, 2020**

From: [Enticknap, Ben](#)
To: odfw.commission@state.or.us
Subject: public comments on exhibit C, whale entanglement regs
Date: Wednesday, September 2, 2020 1:31:19 PM
Attachments: [image001.png](#)
[Oceana EJ CBD Oregon Entanglement regulations.pdf](#)

Greetings,

Attached is a letter I would like to submit on behalf of Oceana, Earthjustice and Center for Biological Diversity for the upcoming Commission meeting agenda; "EXHIBIT C: REDUCING RISK OF WHALE ENTANGLEMENT IN COMMERCIAL CRAB FISHING GEAR".

I've also registered to provide oral comment and I uploaded this same letter to the online form. I was not sure if that was correct or not so I'm submitting again here.

Thank you,

Ben

Ben Enticknap | Pacific Campaign Manager & Senior Scientist



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September 2, 2020

Ms. Mary Wahl, Chair
Oregon Fish and Wildlife Commission
4034 Fairview Industrial Drive SE
Salem, OR 97302

RE: Commercial Crab Whale Entanglement Risk Reduction Measures

Dear Chair Wahl and Commission Members:

Oceana, Center for Biological Diversity and Earthjustice commend the Oregon Department of Fish and Wildlife (ODFW) for proposing regulatory changes with the goal of reducing the risk of whale entanglements in the Oregon commercial Dungeness crab fishery. Such actions are necessary to protect threatened and endangered marine life that migrates and feeds off the Oregon coast and necessary for maintaining the sustainability of one of the state's most important commercial fisheries. We write to request the Commission further reduce the risk of entanglements by:

1. increasing the late season reduction of pot limits from 20 to 30 percent;
2. removing the automatic three-year sunset on the pot limit reduction and prohibition on commercial crabbing outside of 30 fathoms;¹
3. establishing a process to implement temporary in-season area closures in response to elevated entanglement risk;
4. facilitating the use of alternative 'pop-up' fishing gears that can be used to safely catch Dungeness crab without risking whale entanglements; and
5. developing additional rules designed to reduce gray whale entanglement risk.

Globally, entanglement in fishing gear is one of the main threats to large whales. In recent years the number of whales observed entangled in commercial fishing gear off the U.S. West Coast has increased dramatically, including increased entanglement of threatened and endangered whale populations.² The majority of confirmed whale entanglements over the past two decades (2001-2019) off the West Coast, when the gear type is known, have been in commercial Dungeness crab

¹ According to the proposed rule, the 20 percent reduction of pot limits and prohibition on commercial crabbing outside of 30 fathoms would be implemented May 1 through the end of the season on August 14th for three years; 2021 through 2023.

² Saez, L., Lawson, D., and M. DeAngelis. 2020. Large whale entanglements off the U.S. West Coast, from 1982-2017. NOAA Tech. Memo. NMFS-OPR-63, 48 p.

gear with 94 whale entanglements, or 54 percent.³ For many other confirmed entanglements, the gear type is unknown (180 total unknown entanglements) and it is likely far more whale entanglements go undetected.

The threatened Mexican Distinct Population Segment (DPS) and endangered Central American DPS of humpback whales feed and migrate off the Oregon coast, and are of particular concern due to their threatened and endangered status. What is more, mean annual mortality and serious injury from commercial fisheries of 17.3 whales per year currently exceeds the Potential Biological Removal of 16.7 whales per year for the California-Oregon-Washington humpback whale stock.⁴

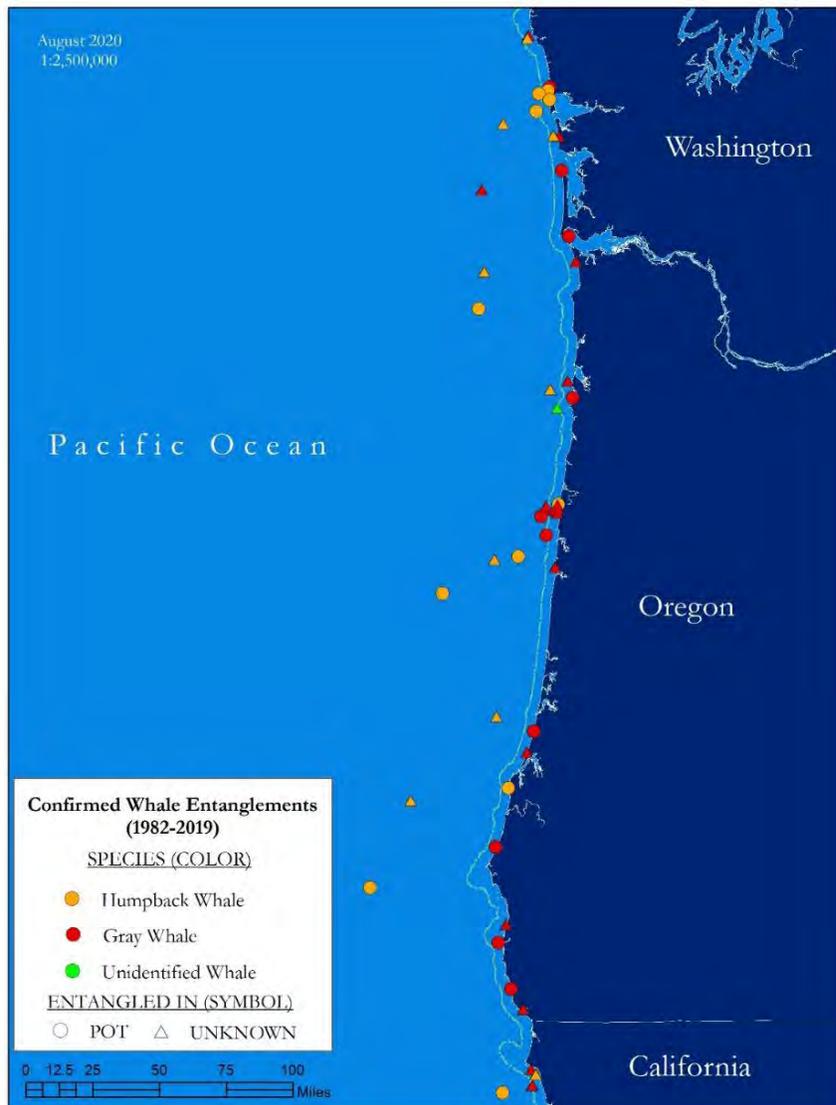


Figure 1. Confirmed whale entanglements off Oregon in pot fishing gear and unknown fishing gear, 1982-2019. Location data indicates where the entanglement was observed, which may not be where the entanglement occurred. Map by Oceana, data source: Saez, L., NOAA, data request, 2020. Large whale entanglements off the U.S. West Coast, from 1982 to 2019.

³ Saez et al. 2020, with updated 2018-19 data, Personal Communication, May 13, 2020.

⁴ NOAA Fisheries. 2020. Humpback whale (*Megaptera novaeangliae*): California/Oregon/Washington stock. Stock Assessment Report (Revised 4/15/2020)177-186.

<https://www.fisheries.noaa.gov/webdam/download/109204343>

Large whales that become entangled in fixed fishing gears like Dungeness crab gear can experience significant physical trauma including increased drag that affects the animal's ability to dive and feed, emaciation, severe tissue damage, infection, and drowning.⁵ If it cannot get free on its own and if it's not disentangled by a response team, the whale normally dies. The National Marine Fisheries Service estimates 75 percent of entangled whales not successfully freed by a trained response team ultimately die.⁶

In response to this alarming and increasing threat to endangered humpback whales, ODFW implemented rules to increase accountability (improved gear marking, 2019) and now proposes additional management measures to reduce the risk of humpback whale entanglement in commercial Dungeness crab gear. While we appreciate ODFW's efforts, the proposed regulations can and should be strengthened. To that we end we make the following requests.

1. Increase the late season reduction of pot limits from 20 to 30 percent.

When entanglement risk is elevated, reducing the number of vertical lines or crab gear in the water can reduce that risk. As such, the proposed rule recommends a 20 percent reduction of pot limits across all ocean Dungeness crab permits between May 1 and the end of the fishing season (August 14) for three years; 2021 to 2023. May to the end of the crabbing season generally represents the time period when increased presence of humpback whales off the Oregon coast overlaps with reduced Dungeness crab fishing effort. For example, May to November is the period when humpback whale feeding aggregations have been observed at Stonewall and Heceta Banks off central Oregon.⁷ The proposed rule notes that the average ex-vessel value of the Oregon Dungeness crab fishery in the past five crab seasons from May to the end of the season is only five percent of total fishing season value.⁸

The analysis of the proposed regulations presented by ODFW to the Commission on August 7, 2020 shows that a 30% pot limit reduction starting May 1 would provide greater relative conservation value for humpback whales than the 20% pot limit reduction.⁹ Yet increasing the late season pot limits from 20 to 30 percent would have only minor, incremental economic costs, from

⁵ Moore, M. J., and van der Hoop, J. M. 2012. The painful side of trap and fixed net fisheries: chronic entanglement of large whales. *Journal of Marine Biology*, Article ID 230653, 4 pp. doi: 10.1155/2012/230653.

⁶ NMFS 2012. Protected Resources Management Process for Distinguishing Serious from Non-Serious Injury of Marine Mammals. National Marine Fisheries Service Instruction 02-038-01 (January 27, 2012).

⁷ Calambokidis, J., G. H. Steiger, C. Curtice, J. Harrison, M. C. Ferguson, E. Becker, M. DeAngelis, and S. M. Van Parijs. 2015. Biologically important areas for selected cetaceans within US waters-west coast region. *Aquatic Mammals* 41:39.

⁸ Notice of Proposed Rulemaking, Chapter 635 Department of Fish and Wildlife, Commercial Crab Whale Entanglement Risk Reduction Measures (July 30, 2020).

⁹ Braby, C. Oregon Department of Fish and Wildlife (August 7, 2020).

- 0.36% to -0.39% of the total annual revenue.¹⁰ We note that the Washington Department of Fish and Wildlife recently implemented a 34% pot limit reduction starting May 1 until the end of each crabbing season¹¹ and thus this would more closely align with the Washington approach. It may also be important to sufficiently increase the pot limit reduction to prevent an increase in nearshore crab pot density resulting from the depth-based closure.

2. Remove the three-year sunset on the proposed late season pot limit reductions and depth-based closure.

The proposed rule implements a pot limit reduction and prohibition on commercial crabbing outside of 30 fathoms from May 1 to the end of the fishing season for three years (2021 – 2023). The Notice of Rulemaking states, “after three years, the rules would be vacated unless the Commission extends or modifies them...”. We find it baffling that two of “the three key measures to reduce risk of whale entanglement”¹² in this rule would be automatically removed in three years failing additional action. This approach places an increased burden on ODFW and the Commission to act again to reduce risk to protect endangered whales versus a failure to act, which would result in the automatic roll-back of conservation measures. Instead, the rules should stay in place with a commitment to monitoring, review and adaptive management. It may be that these conservation measures can be improved upon after an initial 3-year period but the default should not be that conservation measures expire if the agency and the Commission take no action.

3. Establish a mechanism for in-season area closures when entanglement risk is high.

ODFW and the Commission must also ensure that managers have the authority to temporarily close areas when the risk of entanglement is high. We request ODFW and the Commission work to develop the process and criteria for in-season closure of areas with high entanglement risk including identifying the biological and fishery data required to make such determinations, and the legal mechanisms through which in-season closures would be implemented.

4. Facilitate the study and use of ‘pop-up’ fishing gears.

Ultimately, the most effective way to avoid whale entanglement while allowing continued fishing is to remove vertical lines in the ocean that cause entanglements to occur. Pop-up fishing gear — also known as ‘ropeless’ gear — keeps all lines and buoys with the crab pot on the ocean floor without the long rope connected to a surface buoy that is used in conventional gear. An acoustic signal from the boat, or a time-release mechanism, releases a flotation device connected to the pot on the ocean floor, so fishermen can retrieve the gear without the constant threat that long

¹⁰ The Research Group LLC. Economic Impacts Proposed Regulations for Whale Entanglement Avoidance. March 2020. Available: <https://oregondungeness.org/wp-content/uploads/2020/04/ODCC-final-report-and-presentation-ec-impact-ODFW-proposed-measures-whale-entanglement-avoidance-Mar-2020-ver-6.pdf>

¹¹ https://wdfw.wa.gov/sites/default/files/2020-02/letter_to_license_holders_feb_3_2020.pdf

¹² Notice of Proposed Rulemaking, Chapter 635 Department of Fish and Wildlife, Commercial Crab Whale Entanglement Risk Reduction Measures (July 30, 2020), at 2.

anchored ropes pose to unsuspecting marine life. Oceana has been partnering with crab fishermen since 2018 to test the use of pop-up gear off California.¹³ Initial testing has demonstrated that the gear has significant promise to safely and profitably catch Dungeness crab without risking whale entanglements. More testing and development of this new technology, however, is essential to meet the needs of fishermen and fishery managers. We encourage ODFW and the crabbing industry to test different pop-up gear technologies and authorize this gear with incentives for its use like exemptions from pot limit reductions and area closures when deploying pop-up technology.

5. Consider additional rules designed to reduce entanglement risk for gray whales.

Gray whales migrating and foraging off the Oregon coast are also entangled in crab gear leading to serious injury and death. Since 2001 there have been 23 confirmed gray whale entanglements in commercial Dungeness crab gear off the West Coast; and next to humpbacks, gray whales are the second most frequently entangled whale in crab gear.¹⁴

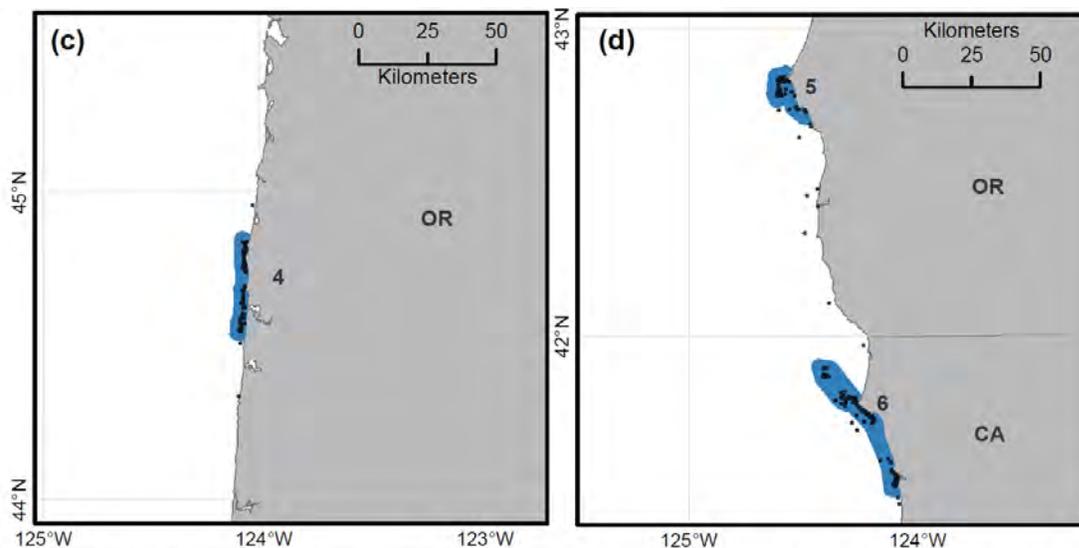


Figure 2. Gray whale feeding Biologically Important Areas (blue polygons) and sightings data (black dots) off Oregon near Depoe Bay and the Cape Blanco/Orford Reef and off Northern California at Point St. George (CA), June to November.¹⁵

This icon of Oregon’s coast uses a relatively narrow band of coastal waters in its impressive annual migration between Arctic foraging grounds and Baja California. Remarkably, over 200 of these

¹³ http://www.opc.ca.gov/webmaster/media_library/2018/08/ropeless-trials-update7-30-18.pdf

¹⁴ Saez et al. 2020, with updated 2018-19 data, Personal Communication, May 13, 2020.

¹⁵ Calambokidis et al. 2015, *supra* note 7. Available:

<https://www.cascadiaresearch.org/files/publications/Calambokidisetal2015BIAs.pdf>

whales known to be part of the Pacific Coast Feeding Group, mostly stay in ocean waters off the Pacific Northwest to feed during summer instead of making the journey further north. Based on years of visual surveys and tagging studies, certain areas have been designated as “Biologically Important Areas” for gray whale feeding including areas near Depot Bay and Cape Blanco (Figure 1).¹⁶ We recommend ODFW and the Commission identify actions to reduce risks to gray whales including implementing seasonal area closures in these distinct feeding areas.

In conclusion, we urge you to amend the proposed rule as described in this letter and take further action to reduce whale entanglement risk. Ultimately a comprehensive solution to prevent whale entanglements includes implementing time and area closures to fishing activity when whales are present, the use of new fishing gear innovations, and increased accountability. We appreciate your attention to this important conservation issue.

Sincerely,



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¹⁶ Calambokidis et al. 2015, *supra* note 7.

From: [Matt](#)
To: odfw.commission@state.or.us
Subject: Exhibit C Whale Entanglement
Date: Tuesday, September 8, 2020 12:45:07 PM

To: ODFW Whale Entanglement mitigation commission

From: Matthew Forve Owner/Operator F/V Sea Chase Doc#584117 Phone 415-794-6479

Dear Commission,

Thank you for considering this email as I will be out albacore fishing on Friday the 11th of September.

It is my strongly held belief that the dungeness crab fishery in Oregon is immensely overcapitalized. The vast majority of crab is caught in the first two weeks of the season. If we used half as many pots, each pot would be more efficient.. would we catch the bulk of the crab in 20 days? If we were to slow this fishery down, most of the participants would benefit, the market would not be flooded so badly, costs would go down, capital investment in crab pots which rust away and get lost in the ocean would go down, and profits would go up for most operators. Please consider the absurd fact that one can hardly find a place to set the last few hundred of our pots at the beginning of the season without tangling another boats gear due to lack of space in the ocean.

Additionally, if we were to remove enough gear to make a large impact on interboat conflict or lack of space, then we could fish several pots on a gang instead of one pot per vertical line. I suggest a reduction to 1/5 of current capacity so a 500 pot permit would now get 100 pots. If these 100 pots were fished 5 to a gang, we would accomplish two things, 1 massively reduce the number of vertical lines to 20 lines per 500 pot permit, and two make it possible to use large bumper buoys as a diver with a short trailer. This is because a gang of 5 pots is a much better anchor than one pot and can hold a large bumper buoy in place whereas single pots will walk off or move or even float or roll away if given too much buoy. A large buoy on a large anchor allows us to have tighter lines, less scope, shorter trailers and near zero entanglement.

Thank you for your consideration,

Matthew Forve

Lisa Kingsley

From: Michelle Tate
Sent: Tuesday, September 8, 2020 4:55 PM
To: Caren Braby (caren.e.braby@state.or.us) (caren.e.braby@state.or.us); Lisa Kingsley
Subject: RE: Whale entanglement risk mitigation measures

Below, not attached

From: Michelle Tate
Sent: Tuesday, September 8, 2020 4:55 PM
To: Caren Braby (caren.e.braby@state.or.us) (caren.e.braby@state.or.us) <caren.e.braby@state.or.us>; Lisa Kingsley <Lisa.M.Kingsley@coho2.dfw.state.or.us>
Subject: FW: Whale entanglement risk mitigation measures

Attached is Justin Yager's comments

From: Justin Yager <justinyager@gmail.com>
Sent: Tuesday, September 8, 2020 10:50 AM
To: michelle.l.tate@state.or.us
Subject: Whale entanglement risk mitigation measures

Dear commission members

I'm a commercial crab fisherman of 20 plus seasons fishing out of Newport Oregon. I have been involved in the entanglement issue for the past few years. Attended countless meetings and work shop's. It seems like its been a long road to say the least. I also sit on the crab advisory panel as a fisherman.

I support changes to the crab season.

I support the ODFW proposed changes of 20 percent gear reduction may 1 and a 30 fathom depth restriction. My opinion is these measures are a small step in the right direction but do not go far enough.

Data shows that humpbacks are most prevalent in the shallow water of our coastline in the summer months.

They tend to show up on the coast in the spring and move inshore later in June - July

Other rational for measures include

Hypoxia events in June July that kill crabs trapped inside pots.

Lost gear and conflicts with other fisheries

Handling mortality and waste from fishing molting crab.

Stress on a resource during warm water months when crabs are most vulnerable.

I support restriction to gear in the spring and closure of the fishery June 1.

Although this may seem extreme by some it is my belief that the fishery would preform better and entangle far fewer whales.

Fisherman as a whole would benefit from this.

Some fisherman will have to adapt in the future

I believe that to survive in our changing world we must adapt ,Work hard and do our best to have concern for our resources and the animals we share the world with.

I believe it's past time for our crab fishery to adapt

I look forward to hearing from you on Friday

Thank you Best Justin

Fv Dauntless Fv Sarah belle Fv Eddie & Rod.

From: [PK](#)
To: ODFW.commission@state.or.us
Subject: Summer crab.
Date: Wednesday, September 9, 2020 12:12:14 PM

Hello. my name is Pat Kemmish. I'm 31 years old, I've been crabbing with my dad since I was 18. I have 2 young boys, I'm the only one that works in our family. We heavily depend on summer crabbing to support our family. We're also supporting local small businesses by providing our product which in turn promotes tourism. Crabbing has been very reliable and sustainable for us compared to other fisheries we could participate in. I strongly believe the "Big" boats are trying to use the whale entanglement issue as leverage to shut down the summer crabbing. They want all of the crab for themselves. They seem to forget about the little guy. They also have other very profitable fisheries in the summer. One of the main guys trying to shut us down used to make a lot of money summer crabbing on a small boat. He then bought bigger boats and now is against the same summer crabbing he used to participate in. That seems like pure Greed to me.

I hope this is all something that is taking in to consideration. I don't know how I would support my family in the summer months without this fishery. Thanks.