



**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635  
DEPARTMENT OF FISH AND WILDLIFE

**FILED**

06/15/2023 3:09 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Commercial Crab Fishery Marine Life Entanglement Risk Reduction Measures

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/04/2023 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

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Filed By:

Steven Emerson

Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 08/04/2023

TIME: 8:00 AM - 5:00 PM

OFFICER: Michelle Tate

HEARING LOCATION

ADDRESS: Oregon Department of Fish and Wildlife, 4034 Fairview Industrial Dr SE, Salem, OR 97302

SPECIAL INSTRUCTIONS:

This hearing will be conducted as a hybrid meeting, providing an opportunity to give testimony either in person or virtually. Additional information regarding participation will be posted on our website at [www.dfw.state.or.us/agency/commission/minutes/](http://www.dfw.state.or.us/agency/commission/minutes/). The meeting can be viewed at [www.youtube.com/user/IEODFW](http://www.youtube.com/user/IEODFW). Any changes to the meeting format (to virtual only if emergency arises) will be posted to our website as soon as possible.

NEED FOR THE RULE(S)

Due to the potential for ESA-listed marine life entanglements in commercial Dungeness crab fishing gear across the West Coast (including gear set in Oregon waters), these amended rules are needed to reduce the risk of marine life entanglement in Oregon crab gear.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

1. Staff report prepared for the Oregon Fish and Wildlife Commission hearing on 08/04/2023.

A copy of the rules and the other documents relied upon for this rulemaking [the above document(s)] are available from the Oregon Department of Fish and Wildlife, Fish Division, 4034 Fairview Industrial Drive SE, Salem, Oregon 97302-1142. Contact Steven Emerson at 503-947-6233 or [steven.c.emerson@odfw.oregon.gov](mailto:steven.c.emerson@odfw.oregon.gov) to view by appointment between the hours of 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

## STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Oregon Department of Fish and Wildlife has solicited input from representatives of underrepresented communities likely to be affected on whether the proposed rule will have a fiscal impact on the community, the extent of the fiscal impact, and whether the rules will have significant impact on underrepresented communities.

<https://www.dfw.state.or.us/OARs/index.asp>

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### FISCAL AND ECONOMIC IMPACT:

This package of marine life conservation measures will result in economic and fiscal impacts as described below. These regulatory steps are expected to maintain fishery activity, have moderate economic impacts, and avoid the need for more extreme measures such as fishery closure. For example, since 2019, California has periodically closed its commercial Dungeness crab fishery early or opened late due to entanglement risk.

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### COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

(1) Implementation of the full set of measures will have economic impacts to all Dungeness commercial crab permittees, although there will be a larger economic impact to participants that typically continue crabbing later into the season (May through the end of the season on August 14, referred to as the late-season). This regulatory package would implement measures to reduce the risk of marine life entanglement and measures to increase operational efficiency. These include:

#### Risk Reduction Measures

- A 20% reduction of pot limits across all ocean Dungeness crab permits and requirement for an additional late-season buoy tag starting May 1 each season.
- Prohibition on commercial crabbing outside of 40 fathoms starting May 1 each season.
- Restriction on the amount of surface gear.
- Allowance for retention of crab from all derelict crab pots.

#### Operational Efficiency Measures

- Allowance for buoy switching and attaching at-sea under an ODFW-issued waiver.
- Exception from purchase of late-season tags to land crab after May 1 by multi-state permittees when fishing gear is placed only in waters off another state and crab are landed into Astoria or Brookings, Oregon.

Three of these measures were implemented starting in 2020 for a three-season period (2020-2021 through 2022-2023) to allow evaluation of their impacts. These are the 20% pot limit reduction, 40 fathom depth restriction, and requirement for an additional late-season buoy tag.

The Oregon Department of Fish and Wildlife (ODFW) and Oregon State Police (OSP) could experience fiscal impacts, as implementation and enforcement of measures will result in adjustments to staff time allotted to other activities, specifically issuance and compliance monitoring of late-season tags each spring and issuance of waivers for buoy tag attachment flexibility. While the impacts of these additional measures on staff time are difficult to estimate in monetary terms, they are not expected to be significant enough to require additional new staff.

The only measures expected to impact ODFW ad-valorem revenues are the 20% pot limit reduction and 40 fathom

depth restriction. There are not data or methods available to estimate the impact of the 40-fathom depth restriction, but it is thought to be small because prior to this measure being implemented, there was only a small amount of crabbing effort deeper than 40 fathoms in the late-season (the season ends August 14). The maximum potential reduction to ODFW ad valorem revenues from the 20% pot limit reduction is estimated at \$13,334 per crab season, based on landings data prior to this measure being implemented (eight seasons from 2012-13 through 2019-20). The maximum reduction in ex-vessel value from this measure is estimated to be \$567,385 per season on average. Since our ad valorem rate is 2.35%, \$13,334 would represent the lost ODFW revenue per season. While these are the maximum potential impacts to agency revenue, we expect the actual revenue impacts to ODFW from these rules to be variable. The ad valorem revenue to ODFW from late-season landings in the first season of the evaluation period (2020-21) was \$2,662 higher than the average ad valorem from the eight previous seasons and \$21,058 lower in the second season (2021-22).

There are no expected direct economic impacts to local governments. However, it should be noted that port communities could be affected by indirect or induced economic effects of the measures.

Risk Reduction Measures - It is difficult to measure the exact economic impact of these measures as there are many changing biological, behavioral and regulatory variables (e.g., stock abundance, season opening delays, price of crab). Collective fishery costs resulting from reduced pot limits in the later portion of the season are particularly difficult to predict, as some participants may find ways to be more efficient with fewer pots or move their gear more often. For context, the average ex-vessel value of the Oregon fishery in the eight crab seasons prior to the evaluation period, from May through the end of the season on August 14, is 2.8 million dollars or 5% of the total season value. Approximately 34% of all crab permittees participate in the fishery during this time period. It is reasonable to assume that the maximum ex-vessel revenue loss, absent any behavioral changes or inherent biological responses, would be equal to the percent reduction in allowable pots under the proposed measures. Twenty percent of the 8-year average ex-vessel value from May through the end of the season would represent an estimated \$567,385, or 1% annual loss of ex-vessel revenue to the fishery as a whole. An estimated \$554,051 of this loss will directly impact crab fisherman, as the other \$13,334 represents impacts to ODFW ad valorem.

Impacts to the public would not be distributed evenly across participants because patterns of participation (i.e., time of year) vary greatly across the fleet. This also does not account for potential downstream impacts to other businesses that buy and sell crab or provide services to the fleet. The average ex-vessel value from late-season landings in the first season of the evaluation period (2020-21) was \$113,292 higher than the average ex-vessel value from the eight previous seasons and \$896,087 lower in the second season (2021-22). Ex-vessel value generated by landings occurring in the 2020-21 late-season equated to 5% of the total season value and 2% in the 2021-22 season. While these realized differences are substantially different than estimated, it is important to note that many factors other than the management measures affect the fishery's value, including during the post-implementation seasons. In particular, the early season opening date and an extraordinarily high starting ex-vessel price per pound of crab during the second season were likely significant factors that contributed to less overall value from the late-season.

There has been additional economic impact work by The Research Group on behalf of the Oregon Dungeness Crab Commission (ODCC). The Research Group used an existing bio-economic crab fishery model to evaluate economic impacts of early season closures and effort reductions of 10, 20, and 30 percent starting in April, May and June. The report on that work is available on the ODCC website: <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>

The requirement for attachment of late-season buoy tags is not expected to impact vessel revenues but will cause

increases to operational costs as discussed in Section 2c.

The restriction on the amount of surface gear is not expected to impact vessel revenues but may cause increases to operational costs as discussed in Section 2c.

The allowance for legal male crab retention from all derelict gear is anticipated to have minor positive impacts on vessel revenues. This allowance is expected to provide all active crab harvesters additional incentive to retrieve derelict gear opportunistically. Removal of derelict gear benefits the entire industry by reducing marine life entanglement risk. The amount of derelict gear and the abundance of crab varies each season therefore estimates of potential revenue obtained from this allowance cannot be determined.

When comparing the economic impacts of these combined measures, they are less severe than the regulatory alternative of an early fishery closure, which has occurred in California since the 2018-2019 season in response to increased whale entanglements. ODFW is pursuing management measures aimed to mitigate economic impacts where possible while effectively reducing the risk of marine life entanglements and enhancing the ability to identify Oregon crab gear to keep the commercial Dungeness fishery open throughout its historical season.

Operational Efficiency Measures - An allowance for switching and attaching buoy tags at sea under a waiver issued by ODFW is intended to provide operational efficiency for permittees. These waivers could be issued to permittees to: 1) switch buoy tags on gear already deployed, 2) switch out already deployed gear with different gear and attach the buoy tags at-sea, and 3) have another vessel attach late-season tags. This provision is expected to decrease permittees overall operational costs when utilized. However, these waivers are intended to be issued in very specific cases and there is not data to estimate how frequently the use of these waivers may occur; therefore, it is not possible to quantify decreases in operational costs.

#### References

Davis, S., and G. Sylvia. 2022. Economic Impacts Proposed Regulations for Whale Entanglement Avoidance. The Research Group. Corvallis, OR.

(2)(a) There are 422 current commercial Dungeness crab permittees which will be subject to the rules.

The surface gear restrictions, allowance for legal male crab retention from all derelict gear, and allowance for buoy tag waivers will affect all permittees that actively utilize their permit to fish for crab in Oregon waters at any time in the season. The type of small businesses most affected by the 20% pot reduction, depth restriction, and late-season tag regulations are permittees that fish later into the season. Although the majority of the harvest occurs during the first eight weeks of the season, 103-183 permittees made landings in Oregon in the late-season during the 8-seasons prior to implementation of the late-season measures in 2020. There are potentially additional vessels subject to these regulations that crabbed off Oregon but only made landings into California or Washington. In the first season of the evaluation period (2020-21) 126 permittees made landings into Oregon the late-season and 119 permittees in the second season (2021-22).

Additional small businesses that may be indirectly affected are those that supply goods or services to commercial Dungeness crab permittees. These may include marinas, food and beverage stores, gasoline stations, commercial fishing gear suppliers, general merchandise stores, accommodation businesses, food services and drinking places. Crab harvesting occurs in many locations throughout the state and thus the number of small businesses indirectly affected by the rules cannot be estimated.

(2)(b) Additional compliance costs relating to reporting, recordkeeping, and administrative activities are not anticipated.

(2)(c) There may be minor labor costs associated with permittees modifying their existing surface gear to comply with the surface gear regulations. However, most existing surface gear is likely already compliant based on industry input. There is not available data to quantify the extent of these costs.

Those permittees who continue to participate in the late-season fishery will need to purchase late-season buoy tags at a current cost of \$1.15 each. For each pot limit tier, the maximum costs to permittees could be \$184 for a 200-pot tier, \$276 for a 300-pot tier and \$460 for a 500-pot tier permit annually at the current price of buoy tags. Permittees will not be required to purchase their full allotment of late-season tags if they do not intend to fish their full reduced pot limit. Rather they will be allowed to purchase any number of tags within their reduced allotment. In the first season of the evaluation period (2020-21) 149 permittees bought late-season tags from ODFW while 138 permittees bought late-season tags in the second season (2021-22).

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DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

These measures were developed with extensive public input from 2017-present, including representatives of small businesses. The Oregon Whale Entanglement Working Group (OWEWG) convened from 2017-2021 with ODFW and crab industry representation, to make preliminary and general recommendations on management measures for ODFW to consider. Starting in 2022, ODFW began facilitation of this group and renamed it the Oregon Entanglement Advisory Committee (OEAC). The purpose of the OEAC is to serve as an advisory body to ODFW on efforts to reduce the risk of marine life entanglements in Oregon Dungeness crab gear. ODFW has hosted three public meetings of this group in part to discuss these proposed measures.

ODFW held a series of public meetings with the commercial Dungeness crab industry in 2018, 2019, 2020, and 2022 in coastal ports. In the 2018 meetings, ODFW described marine life entanglements, the relevance to Oregon commercial fisheries, and potential regulatory actions at a high level. In the 2019, 2020, and 2022 meetings, ODFW described a suite of detailed regulatory options and received input from the public. Most attendees at these public meetings were owners or employees of small businesses.

ODFW has also met regularly with and solicited input from ODFW's Oregon Dungeness Crab Advisory Committee (ODCAC) to discuss management approaches and details of the regulations. Membership of ODCAC was expanded in 2019 to include all Commissioners from the Oregon Dungeness Crab Commission and members of the OEAC (formerly OWEWG), and representatives of any other type of crab association in Oregon specifically to gain wider input on these regulations. The vast majority of ODCAC members are owners or employees of small businesses.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

No. These rules were developed with extensive public input including the Oregon Sea Grant facilitated OWEWG process from 2017-2021, eleven public meetings sponsored by ODFW and held from 2018-2022, and consultation with the ODFW's OEAC from 2021-2023 and ODCAC from 2017-2023.

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RULES PROPOSED:

635-005-0405, 635-005-0460, 635-005-0480, 635-005-0485, 635-005-0490

AMEND: 635-005-0405

RULE SUMMARY: This regulatory package implements a suite of management measures to reduce the risk of marine life becoming entangled in commercial crab fishing gear. The package also includes some minor rule amendments to

increase operational efficiency in the fishery.

CHANGES TO RULE:

635-005-0405

Requirement for Ocean Dungeness Crab Permit ¶¶

(1) It is unlawful to take, land or possess Dungeness crab from the ocean Dungeness crab fishery without first obtaining an Ocean Dungeness Crab Permit issued pursuant to ORS 508.931 or 508.941. An Ocean Dungeness Crab Permit is not required for vessels that are engaged solely in setting gear for a permitted vessel and which do not retrieve, retain or possess Dungeness crab.¶¶

(2) It is unlawful for a wholesaler, canner, or buyer to buy or receive Dungeness crab taken in the ocean Dungeness crab fishery from a vessel for which the permit required by this rule has not been issued.¶¶

(3) If the Commission establishes a vessel crab pot limitation or allocation system beyond the 2002-03 ocean Dungeness crab season, August 14, 2001 is the control date for eligibility criteria related to past participation in the ocean fishery.¶¶

(4) A Single Delivery License shall not be substituted for an Ocean Dungeness Crab Permit. Once a vessel has obtained an Ocean Dungeness Crab Permit, Dungeness crab may be landed by the vessel using a combination of an Ocean Dungeness Crab Permit and a Single Delivery License in lieu of a commercial fishing and boat license. However, crab may not be landed more than twice in any one ocean Dungeness crab fishing season using Single Delivery Licenses.¶¶

(5) Effective December 1, 2006, the amount of Dungeness crab gear allocated to a permit required under section (1) above will be determined as follows:¶¶

(a) The allocation will be based on documented landings of ocean Dungeness crab into Oregon, Washington (excluding landings from the Puget Sound Fishery), or California, using valid Oregon fish receiving tickets, or equivalent valid documents from the states of Washington or California, from December 1, 1995 through August 14, 2001;¶¶

(b) The Dungeness crab gear allocation will be the highest number of pots and rings in aggregate the vessel qualifies for during the six qualifying seasons, December 1 of one year through September 15 of the next year (except through August 14, in 2001);¶¶

(c) A Dungeness crab gear allocation of 200 shall be assigned to a permit with landings less than 15,020 pounds in the 1995 to 1996 season, and 4,010 pounds in the 1996 to 1997 season, and 5,170 pounds in the 1997 to 1998 season, and 7,083 pounds in the 1998 to 1999 season, and 13,160 pounds in the 1999 to 2000 season, and 8,940 pounds in the 2000 to 2001 season;¶¶

(d) A Dungeness crab gear allocation of 300 shall be assigned to a permit with minimum landings of 15,020 pounds in the 1995 to 1996 season, or 4,010 pounds in the 1996 to 1997 season, or 5,170 pounds in the 1997 to 1998 season, or 7,083 pounds in the 1998 to 1999 season, or 13,160 pounds in the 1999 to 2000 season, or 8,940 pounds in the 2000 to 2001 season; and¶¶

(e) A Dungeness crab gear allocation of 500 shall be assigned to a permit with minimum landings of 89,020 pounds in the 1995 to 1996 season, or 35,180 pounds in the 1996 to 1997 season, or 39,350 pounds in the 1997 to 1998 season, or 49,450 pounds in the 1998 to 1999 season, or 78,400 pounds in the 1999 to 2000 season, or 37,030 pounds in the 2000 to 2001 season.¶¶

(6) The Ocean Dungeness Crab Permit required by section (1) of this rule is in addition to and not in lieu of the commercial fishing and boat license required by ORS 508.235 and ORS 508.260.¶¶

(7) No vessel may hold more than one Ocean Dungeness Crab Permit at any one time.¶¶

(8) Unless otherwise provided, Ocean Dungeness Crab Permits must be purchased by December 31 of the year the permit is sought for renewal.¶¶

(9) Applications for Ocean Dungeness Crab Permits shall be in such form and contain such information as the Department may prescribe. Proof of length of a vessel may be required at the time of application.¶¶

(10) Notwithstanding section (5) of this rule, ~~effective for calendar years 2021 through 2023~~, from May 1 through August 14 the amount of Dungeness crab gear allocated to a permit required under section (1) of this rule shall be reduced to 80 percent of the amount allocated under section (5) of this rule. A permit assigned a Dungeness crab gear allocation per section (5) of this rule of:¶¶

(a) 200 shall be assigned a Dungeness crab gear allocation of 160;¶¶

(b) 300 shall be assigned a Dungeness crab gear allocation of 240; or¶¶

(c) 500 shall be assigned a Dungeness crab gear allocation of 400.

Statutory/Other Authority: ~~ORS 506.036, 506.109, 506.119, 506.121~~ 19

Statutes/Other Implemented: ~~ORS 506.109, ORS 506.129, 506.306, 508.926, 508.931~~

AMEND: 635-005-0460

RULE SUMMARY: This regulatory package implements a suite of management measures to reduce the risk of marine life becoming entangled in commercial crab fishing gear. The package also includes some minor rule amendments to increase operational efficiency in the fishery.

CHANGES TO RULE:

635-005-0460

Harvest Areas - Dungeness Crab Fishery ¶

(1) Oregon Dungeness crab permits are valid only in Oregon state waters and the Pacific Ocean in federal waters south of an east-west line extending westward at 46° 15' 00" North Latitude (Oregon/Washington border) and north of an east-west line at 42° 00' 00" North Latitude (Oregon/California border).¶

(2) ~~Effective for calendar years 2021 through 2023, f~~From May 1 through August 14 it is unlawful to place, operate, or leave commercial Dungeness crab gear seaward of the 40 fathom depth contour (defined by latitude and longitude) as shown in Title 50 Code of Federal Regulations Part 660 Section 71. Any commercial Dungeness crab gear found seaward of the 40 fathom depth contour ~~during the effective dates~~from May 21 through August 14 shall be considered derelict and may be retrieved per 635-005-0490.

Statutory/Other Authority: ~~ORS 506.036, 506.109, 506.119, 506.121~~19

Statutes/Other Implemented: ORS 506.109, ORS 506.129

AMEND: 635-005-0480

RULE SUMMARY: This regulatory package implements a suite of management measures to reduce the risk of marine life becoming entangled in commercial crab fishing gear. The package also includes some minor rule amendments to increase operational efficiency in the fishery.

CHANGES TO RULE:

635-005-0480

#### Dungeness Crab Buoy Tag and Gear Marking Requirements ¶¶

It is unlawful for commercial purposes to:¶¶

(1) Use commercial Dungeness crab gear in the Columbia River or Pacific Ocean unless the gear is individually marked with a surface buoy bearing, in a visible, legible and permanent manner, the buoy brand and buoy color(s) of the owner, and the Department buoy tag issued for the current season, provided that:¶¶

(a) The buoy brand consists of letters and/or numbers, and the buoy brand and buoy color or color combination are registered with and approved by the Department; The buoy color or color combination shall be submitted to the Department as a color photograph for registration;¶¶

(b) Only one unique buoy brand and one buoy color or color combination shall be registered to any one permitted vessel;¶¶

(c) All Dungeness crab gear fished by a permitted vessel must use only the Oregon buoy brand number and at least one buoy with the buoy color or color combination registered to that vessel in the area off of Oregon;¶¶

(d) The Department shall issue crab buoy tags to the owner of each commercial crab permit in the amount determined by OAR 635-005-0405(5);¶¶

(e) All buoy tags eligible to a permit holder must be purchased from the Department at cost and attached to the gear prior to setting gear;¶¶

(f) Buoys attached to Dungeness crab gear must have the buoy tag securely attached to the buoy closest to the gear at the end away from the buoy line; and¶¶

(g) Additional buoy tags to replace lost tags will be issued by the Department as follows:¶¶

(A) For a catastrophic loss, as defined in OAR 635-005-0240; or¶¶

(B) If the Director finds that the loss of buoy tags was:¶¶

(i) Due to an extraordinary event;¶¶

(ii) The loss was minimized with the exercise of reasonable diligence; and¶¶

(iii) Reasonable efforts were taken to recover lost buoy tags and associated fishing gear.¶¶

(C) Upon receipt of the declaration of loss required by subsection (1)(g)(D) of this rule, and a request for replacement tags under subsection (1)(g)(B) of this rule, the Director or the Director's designee may provide an opportunity for the permit holder requesting the replacement tags to describe why the buoy tag loss meets the criteria for replacement under subsection (1)(g)(B) of this rule. The Director or the Director's designee shall provide the Director's order to the permit holder and to the Department's License Services. The permit holder may appeal the Director's findings to the Fishery Permit Review Board under OAR 635-005-0425.¶¶

(D) Permit holders (or their alternative designated on the buoy tag order form) must obtain, complete, and sign a declaration of loss under penalty of perjury in the presence of an authorized Department employee. The declaration shall state the number of buoy tags lost, the location and date where lost gear or tags were last observed, and the presumed cause of the loss.¶¶

(2) Possess on a vessel, use, control, or operate any Dungeness crab gear which does not have a tag affixed to the individual pot or ring identifying the gear as belonging to that vessel, a surface buoy bearing the Department buoy brand registered to that vessel, and a Department buoy tag issued by the Department to that vessel for the current season, as pursuant to ORS 509.415, except:¶¶

(a) To set gear as allowed under OAR 635-005-0405; or¶¶

(b) Under a waiver granted by the Department to allow one time retrieval of permitted Dungeness crab gear to shore by another crab permitted vessel provided that:¶¶

(A) The vessel is incapacitated due to major mechanical failure or destroyed due to fire, capsizing, or sinking;¶¶

(B) Circumstances beyond the control of the permit holder as defined by undue hardship in OAR 635-005-0240 occurred;¶¶

(C) A Request must be in writing and a waiver approved and issued prior to retrieval; and¶¶

(D) A copy of the waiver must be on board the vessel making the retrieval (Contact Department of Fish and Wildlife Licensing Services, Salem for guidelines).¶¶

(c) Under a waiver granted by the Department to allow ea:¶¶

(A) One time change of buoy tags for gear deployed at sea associated with a Dungeness crab permit transfer under

OAR 635-005-0440 provided that:

~~(A) A request must be in writing and a waiver approved and issued prior to:~~

~~(B) One time change of buoy tags to another vessel's tags for gear deployed at sea. The vessel making the change must be either the vessel that the deployed buoy tags are assigned to or the vessel that the new tags are assigned to;~~

~~(C) One time change of buoy tags; and~~

~~(B) A copy of the waiver must be on board at sea to different crab pots or rings owned by the same vessel making the change. The vessel making the change of buoy tags (Contact Department of Fish and Wildlife Licensing Services, Salem for guidelines).~~

~~(d) Under a waiver granted by the Department to allow must be the vessel the buoy tags are assigned to, and gear must be transported to shore on the same fishing trip;~~

~~(D) One time attachment of late season tags to gear deployed at sea by a vessel other than the vessel the buoy tags are assigned to; or~~

~~(E) One time retrieval of permitted Dungeness crab gear to shore by another crab permitted vessel from August 1 through August 14.~~

~~(d) Waivers for activities described in subsection (2)(c) of this rule may be issued by the Department provided that a:~~

~~(A) A Request must be in writing and a waiver approved and issued prior to retrieval conducting the activity; and~~

~~(B) A Copy of the waiver must be on board the vessel mak conducting the retrieval activity (Contact Department of Fish and Wildlife Licensing Services, Salem for guidelines).~~

~~(e) When retrieving derelict Dungeness crab gear as pursuant to OAR 635-005-0490 or 635-005-0491;~~

~~(f) A vessel may transit through the Columbia River and the Pacific Ocean adjacent to Oregon while possessing Dungeness crab gear not bearing Oregon buoy tags or Oregon buoy branded surface buoys, provided that the vessel is authorized and en route to participate or returning from participating in the Dungeness crab fishery of an adjacent state; or~~

~~(g) When operating crab rings in bays or estuaries, only a tag affixed to the individual ring is required.~~

~~(3) Use commercial Dungeness crab gear in the Columbia River or Pacific Ocean with a line mark that is required for any state or federal fishery, other than the Oregon Dungeness crab fishery, operating in the U.S. West Coast EEZ, or the state waters of Washington, Oregon, or California.~~

~~(4) Effective for calendar years 2021 through 2023, From May 1 through August 14, possess on a vessel, use, control, or operate commercial Dungeness crab gear in the Columbia River or Pacific Ocean unless the gear is individually marked with a secondary Department buoy tag issued by the Department to that vessel for the current season in addition to the buoy tag required under section (1) of this rule, provided that:~~

~~(a) The primary buoy tag shall remain attached as required per section (1) of this rule;~~

~~(b) The secondary buoy tag shall be securely attached to the buoy closest to the gear at the end away from the buoy line;~~

~~(c) The Department shall issue secondary buoy tags to the owner of each commercial crab permit in the amount requested by the permit owner, not to exceed the amount determined by OAR 635-005-0405(10);~~

~~(d) Secondary buoy tags must be purchased from the Department at cost and attached to the gear as of the effective date but no earlier than April 10;~~

~~(e) The exceptions found in sections (2)(b) through (2)(g) of this rule also apply to this section; and~~

~~(f) Any commercial Dungeness crab gear found in the ocean or Columbia River without a secondary buoy tag during the effective dates of this section from May 21 through August 14 shall be considered derelict and may be retrieved per OAR 635-005-0490;~~

~~(5) Effective for calendar years 2021 through 2023, From May 1 through August 14, land Dungeness crab into Oregon for commercial purposes unless secondary buoy tags have been purchased from the Department for the Oregon commercial crab permit under which the landing vessel is operating, except vessels that do not have any Dungeness crab gear deployed between 46° 15' 00" North Latitude (Oregon/Washington border) and 42° 00' 00" North Latitude (Oregon/California border) may land crab legally taken from another state into the ports of Astoria or Brookings, Oregon.~~

~~Statutory/Other Authority: ORS 506.036, ORS 506.109, ORS 506.119, ORS 506.121, 19~~

~~Statutes/Other Implemented: ORS 506.109, ORS 506.129~~

AMEND: 635-005-0485

RULE SUMMARY: This regulatory package implements a suite of management measures to reduce the risk of marine life becoming entangled in commercial crab fishing gear. The package also includes some minor rule amendments to increase operational efficiency in the fishery.

CHANGES TO RULE:

635-005-0485

#### Dungeness Crab Gear Prohibitions ¶¶

It is unlawful for commercial purposes to:¶¶

- (1) Place, operate, or leave Dungeness crab gear in the Pacific Ocean, Columbia River or in any bay or estuary during the closed season, except that in only the Pacific Ocean and Columbia River, Dungeness crab gear may be placed no more than 73 hours immediately prior to the date the Dungeness crab season opens.¶¶
- (2) Have Dungeness crab gear deployed in the Pacific Ocean or Columbia River more than 14 days without making a landing of Dungeness crab.¶¶
- (3) Remove, damage, or otherwise tamper with crab buoy, pot or ring tags except:¶¶
  - (a) When lawfully applying or removing tags on the vessel's buoys, pots or rings; or¶¶
  - (b) When lawfully removing tags on crab gear retrieved under a Post-Season Derelict Gear Permit pursuant to OAR 635-005-0491 and after the gear has been registered by state officials.¶¶
- (4) Attach one crab pot or ring to another crab pot or ring by a common groundline or any other means that connects Dungeness crab gear together.¶¶
- (5) Take crabs for commercial purposes by crab pots from any bay or estuary except the Columbia River.¶¶
- (6) Take or fish for Dungeness crab for commercial purposes in the Columbia River or Pacific Ocean adjacent to the state of Oregon unless a Dungeness crab gear allocation has been issued to the permit required under OAR 635-005-0405(5).¶¶
- (7) Deploy or fish more Dungeness crab gear than the number of pots and rings in aggregate assigned by the Dungeness Crab Pot Allocation Certificate or to use any vessel other than the vessel designated on the Dungeness Crab Pot Allocation Certificate, except to set gear as allowed under OAR 635-005-0405.¶¶
- (8) Use Dungeness crab gear with more line than is reasonably necessary to compensate for tides, currents, and weather.¶¶
- (9) Use more surface gear in addition to the main buoy, defined as the buoy closest to the crab pot or ring, than the following:¶¶
  - (a) Two trailer buoys.¶¶
  - (b) One end marker buoy that shall not extend more than three feet in length behind the last trailer buoy. End marker buoys shall be less than five inches in diameter and are not considered trailer buoys.¶¶
  - (c) A distance of 36 feet between the front end of the main buoy to the tail end of the last trailer buoy.

Statutory/Other Authority: ~~ORS 506.036, 506.109, 506.119, 506.125~~ 506.119

Statutes/Other Implemented: ~~ORS 506.109, 506.129~~

AMEND: 635-005-0490

RULE SUMMARY: This regulatory package implements a suite of management measures to reduce the risk of marine life becoming entangled in commercial crab fishing gear. The package also includes some minor rule amendments to increase operational efficiency in the fishery.

CHANGES TO RULE:

635-005-0490

#### Derelict Dungeness Crab Gear ¶¶

Derelict Dungeness crab gear may be retrieved from the ocean, including the Columbia River, and transported to shore provided that:¶¶

(1) The retrieving vessel holds a valid boat license, issued pursuant to ORS 508.260, and the captain and crew of that vessel hold valid commercial fishing license(s), issued pursuant to ORS 508.235.¶¶

(2) The number of derelict Dungeness crab gear which may be retrieved per trip are as follows:¶¶

(a) From the opening of the ocean Dungeness crab fishery in the area where retrieval takes place until the second Monday in June of the same ocean Dungeness crab season: 25 derelict pots and rings in aggregate;¶¶

(b) From the second Monday in June through August 14: 50 derelict pots and rings in aggregate;¶¶

(c) August 15 through October 31: an unlimited number of derelict pots and rings may be retrieved.¶¶

(3) Upon retrieval from the ocean or Columbia River, the Dungeness crab gear must be un-baited.¶¶

(4) Crab from the retrieved Dungeness crab gear shall not be retained, except crab of legal size and sex may be retained by vessels holding a valid Dungeness crab permit, ~~at such times and in such areas that Dungeness crab may otherwise be legally taken for commercial purposes from the starting date through August 14 of each Dungeness crab season. Crab shall not be retained from Dungeness crab gear that is retrieved from within the boundaries of a marine reserve under any circumstances (OAR 635-012-0050).~~¶¶

(5) Immediately upon retrieval of Dungeness crab gear, the retrieving vessel operator must document in the retrieving vessel's logbook the date and time of pot or ring retrieval, number of retrieved crab pots or rings in aggregate, location of retrieval, and retrieved Dungeness crab gear owner identification information.¶¶

(6) Any retrieved Dungeness crab gear must be transported to shore during the same fishing trip that retrieval took place.

Statutory/Other Authority: ~~ORS 506.036, 506.109, 506.119, 506.121~~19

Statutes/Other Implemented: ~~ORS 506.1029, ORS 506.129, 506.306~~09