



AGENDA ITEM SUMMARY

BACKGROUND

Since 2014, whale entanglements in fixed fishing gear across the West Coast have increased, most commonly involving encounters between humpback whales and commercial Dungeness crab gear. During this time, the frequency and level of humpback whale entanglements attributed by the National Marine Fisheries Service (NOAA Fisheries) to Oregon commercial Dungeness crab gear has also increased. The increase in encounters is likely driven by an increasing West Coast humpback whale population, changing ocean conditions that increase overlap of whales and crab gear, and improved reporting and documentation of entanglements. Humpback whale abundance off the West Coast was estimated to be around 5,000 animals based on data through 2018 and is increasing approximately 8.2 percent annually (Calambokidis and Barlow, 2020), though growth of individual stocks is likely variable.

Oregon Department of Fish and Wildlife (Department) staff have been working with industry and other stakeholders, with increased effort since 2019, to develop and implement a comprehensive strategy to minimize and mitigate the incidental entanglement of whale species by the Oregon commercial crab fishery. Key entanglement risk reduction measures were adopted in 2020 by the Oregon Fish and Wildlife Commission (Commission) that focus on reducing overlap between crab gear and humpback whales in time and space. These late-season (after May 1) measures include a 20% reduction in pot limits across all ocean commercial Dungeness crab permits, a requirement for an additional late-season buoy tag, and a prohibition on commercial crabbing outside of 40 fathoms. Separate measures have been adopted by the Commission that further reduce vertical lines, minimize delays in peak harvest effort, require gear to be rigged in ways that reduce entanglement risk (e.g., by minimizing excess scope of fishing line and limiting the maximum amount of surface gear allowed to be used on each pot), and help to recover lost or derelict gear both during and after the crab season.

These measures, as well as detailed monitoring and adaptive management strategies, form the basis of the Department's draft conservation plan (CP) that is currently under development and that is required to secure an incidental take permit (ITP) under section 10 of the federal Endangered Species Act (ESA). An initial draft CP was shared with the Commission in September 2021. Department staff have been routinely coordinating with NOAA Fisheries to revise the CP based on their feedback, and to ensure that it includes all statutorily required elements, is based on the best available scientific data, and proposed measures are both practicable and effective. Finalization of the CP and issuance of an ITP will ensure compliance with federal statutes and provide a framework for ensuring that conservation goals are met while still allowing for a viable and sustainable fishery.

The Department's 2026 work plan further advances regulatory measures to reduce entanglements and its work with NOAA Fisheries:

- By August 2026, the Department is scheduled to complete a five-year review of key entanglement risk reduction measures and present the review to the Commission.
- The Department will convene the Oregon Entanglement Advisory and Oregon Dungeness Crab Advisory Committees to develop additional measures and conduct rulemaking for consideration by the Commission by August 2026. The rulemaking will include

consideration of experimental permits for testing pop-up and longline gear and requirements for electronic vessel monitoring.

- By December 2026, the Department will submit the CP and ITP application package to NOAA Fisheries.

Further rulemaking and adaptive management is anticipated over the following years as additional data are gathered and systems are put in place based on the 2026 regulations and based on an approved Conservation Plan and ITP.

On December 11, 2025, the Department received a petition titled “Petition to Adopt New Rules and Amend Oregon Administrative Rules Chapter 635, Division 5” (petition) from the Center for Biological Diversity, Oceana, Natural Resources Defense Council, and the American Cetacean Society (Petitioners) (Attachment 2). The petition requests the Commission adopt three new rules and amend six existing rules pertaining to the commercial Dungeness crab fishery. The petition’s stated goal is to “strengthen Oregon’s current entanglement risk reduction measures, create a pathway for authorization of safer pop-up fishing gear, and establish a process for timely public reporting of marine mammal or sea turtle entanglements in Oregon commercial Dungeness crab fishing gear.”

Per the Oregon Administrative Procedures Act (APA) (ORS 183.390(1) and OAR 137-001-0070), the agency must either deny the petition in writing, or initiate rulemaking proceedings within 90 days after the date of submission of a valid petition, which is March 11, 2026, for this petition. **At this meeting (February 20), the Commission will decide only whether to initiate a rulemaking process in response to the petition, or to deny the petition. The Commission will not be taking any rulemaking action at this meeting.**

Since the Department is already planning rulemaking, the question of accepting or denying the petition is awkward. In either case (accept or deny) the Department is on a planned path and will continue unless specifically directed otherwise by the Commission. Any direction that adds to the planned rulemaking would extend the time to develop rules and bring them to the Commission for consideration. It would also delay implementation of the planned changes which are essential to informing future rulemaking actions.

PUBLIC INVOLVEMENT

For APA petitions pursuant to ORS 183.390(2), the agency must invite public comment upon the rules and specifically request public comment on whether options exist for achieving the rules’ substantive goals in a way that reduces the negative economic impact on businesses.

In advance of this Commission meeting, staff informed stakeholders and the public about the petition, the nature of the proposed rule changes, and the opportunity for public comment through several methods, including:

- An email to members and parties interested in the Oregon Dungeness Crab Advisory Committee, which provides input to the Department on commercial crab management;
- An email to members and parties interested in the Oregon Entanglement Advisory Committee, which provides input on entanglement risk reduction efforts in Oregon Dungeness crab gear;
- An industry notice mailed to all commercial crab permit holders and crab buyers;

- A notice to over 15,000 subscribers to the ODFW commercial crab listserv, which is used to provide updates related to the commercial crab fishery;
- A notice to over 8,000 subscribers to the ODFW listserv, which is used to provide Commission updates generally;
- A news release with information on the February 20 Commission meeting agenda and logistics;
- At two meetings convened by the Oregon Dungeness Crab Commission (ODCC) to discuss the petition, including a town hall for the Oregon Dungeness crab fleet and stakeholders on January 21, 2026, and a special meeting of the ODCC held on January 27, 2026; and
- Through numerous calls, emails, and in-person communications between staff and stakeholders regarding various aspects of the petition.

Members of the public can also view the petition on the Department’s website. The public had or will have an opportunity to provide comment prior to (in writing) or during (orally) this Commission meeting. Petitioners also spoke to this petition in the Public Forum portion of the Commission meeting on December 12, 2025.

ISSUE

Consider Petition to Adopt New Rules and Amend Rules in Oregon Administrative Rules Chapter 635, Division 5, Related to the Commercial Dungeness Crab Fishery

ANALYSIS

Collectively, this petition seeks to amend six existing rules (OARs 635-005-0240, 635-005-0275, 635-005-0405, 635-005-0460, 635-005-0480, and 635-005-0485) and adopt three new rules (OARs 635-005-0236, 635-005-0401, and 635-005-0476) in Chapter 635, Division 5. These rules govern Oregon’s ocean and Columbia River commercial Dungeness crab fishery and pertain to gear, fishery operations, and agency procedures.

This section includes an overview of the petition and proposed rule changes, a six-factor analysis required under the APA, and a summary of staff’s recommendation.

Petition Overview and Proposed Rule Changes

The Petitioners are seeking the following changes that broadly fall into four categories:

Pop-up gear: The Petitioners are requesting amendment of four rules and adoption of one new rule that collectively aim to enable and advance pop-up gear use in the crab fishery. Pop-up gear, used on its own or in combination with longlined pots, has the potential to minimize vertical lines through technology which secures the vertical line and buoy near the crab pot on the ocean floor until the pot is ready to be retrieved, at which time the buoy and line are released to the surface. Specific measures requested in the petition include:

- Add pop-up gear to the list of authorized commercial gear types
- Establish a process for pop-up gear authorization
- Exempt pop-up gear from surface gear marking requirements and groundline restrictions (i.e., longlining prohibition)
- Modify definitions used in Division 5 to allow for implementation of pop-up gear

Late-season vertical line restrictions: The Petitioners are requesting amendment of three rules to further restrict vertical lines in the water during the crab late-season. Proposed measures include adjustments to existing late-season measures through 2028, as well as prohibition of conventional (non-pop-up) gear after April 1 each season starting in 2028. Specific measures requested through 2028 include:

- Move the implementation date from May 1 to April 1
- Increase the pot limit reduction from 20% to 40%
- Move the depth restriction from 40 fathoms to 30 fathoms
- Exempt pop-up gear from the late-season pot limit reduction and depth restriction
- Define conventional gear outside 30 fathoms after April 7 as derelict
- Align late-season tag requirement with requested April 1 start date

Starting in 2028, the proposed amendments establish that any commercial Dungeness crab gear in the water from April 7 through the end of the season is considered derelict and subject to derelict gear recovery provisions. Note: This section of the Petitioners' proposed rule may have been directed at derelict conventional gear, but as written, would classify otherwise legal pop-up gear as derelict as well.

Public notice of entanglements: The Petitioners are requesting adoption of a new rule requiring the Department to provide public notice of any marine mammal or sea turtle entanglement in Oregon or in gear originating from Oregon within 48 hours of receiving a report. The proposed rule specifies what information shall be made publicly available and additionally requires the Department to make its best efforts to identify the material and/or type of the entangling gear according to specific categories.

Emergency procedures: The Petitioners are requesting adoption of a new rule requiring emergency procedures that must be taken when unauthorized take occurs. The proposed rule prescribes the following actions:

- In the event of one confirmed entanglement of an ESA-listed species in Oregon crab gear, or two or more confirmed entanglements in unknown gear that may be Oregon crab gear, the Department will close the fishery to conventional gear for the duration of the season in at least one of three defined zones (north of Cape Falcon, Cape Falcon to Cape Arago, south of Cape Arago).
- In the event of two confirmed entanglements of an ESA-listed species in Oregon crab gear during the season, the Department will implement a statewide fishery closure.
- Until 2028, in the event of one or more confirmed entanglements of an ESA-listed species in Oregon crab gear after the season, the Department will close the fishery to conventional gear after April 1 the following season in at least one of the three defined zones above.

Six-Factor Analysis for Proposed Rule Amendments

In accordance with ORS 183.390(3), the following factors must be considered by the Commission during review of an APA petition requesting the amendment or repeal of an existing rule:

1. The continued need for the rule;
2. The nature of complaints or comments received concerning the rule from the public;
3. The complexity of the rule;

4. The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations;
5. The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and
6. The statutory citation or legal basis for the rule.

Information is provided below to assess these six factors relative to existing collective rules proposed for amendment as required by OAR 137-001-0070(2). These rules pertain to commercial crab fishery gear, harvest areas, and fishery operations. Information related to the proposed rule amendments from the petition is included where applicable.¹

1. The continued need for the rule

Consistent with the Food Fish Management Policy (ORS 506.109) and Wildlife Policy (ORS 496.012), Oregon’s Dungeness crab fishery management is designed to maintain a healthy population and prevent serious depletion of the crab resource, while maximizing long-term economic, commercial, recreational, and aesthetic benefits for present and future generations. Administrative rules pertaining to the commercial Dungeness crab fishery in Oregon are extensive and have been adopted and modified over time to facilitate orderly fisheries management. The rules provide structure and limits to prevent overharvest, overcapitalization, facilitate a sustainable and manageable fishery, and incorporate multiple measures to minimize risk to protected species. These measures include rules adopted in recent years to reduce the incidence of marine life entanglement. Additional actions are already being considered for implementation given an elevated number of humpback whale entanglements that have been attributed by NOAA Fisheries to Oregon commercial Dungeness crab gear in 2024 and 2025.

2. The nature of complaints or comments received concerning the rule from the public

To date, the Department has received comments both in support of and in opposition to the petition and the rules it addresses (Attachment 3). Those in support of the petition are generally in favor of all efforts to reduce the likelihood of marine life entanglements. Those opposed to the petition expressed concerns about the financial impact of additional constraints on individual small businesses and throughout coastal communities, the disproportionate impacts of late-season measures on businesses that rely mostly or exclusively on harvest during those months, and the cost and viability of pop-up gear adoption when it has not been tested in Oregon or proven at scale. Opponents of the petition emphasized that the humpback whale population off the West Coast is increasing, and that the commercial crab industry has already implemented many measures to reduce entanglement risk at significant cost to those businesses. Several crab industry members recommended alternative options for reducing entanglement risk while minimizing adverse impacts to industry. Additional comments are also expected to be forthcoming prior to this Commission meeting. These will be shared with the Commission directly, in addition to any comments shared during public testimony for this agenda item.

On January 21, 2026, the ODCC hosted a town hall for the Oregon Dungeness crab fleet and stakeholders to discuss this petition. Many of the concerns above related to financial impacts and increasing whale abundance driving higher entanglement numbers were shared. Attendees also spoke to safety concerns associated with needing to remove gear earlier in the season. Industry members urged the Department to consider the cumulative financial and operational impacts of

¹ Note: This petition also requests adoption of three new rules (related to public notice of entanglements, emergency procedures, and pop-up gear authorization); however, the same analysis is not required under the APA for petitions requesting rule adoption.

all of the measures implemented to date and planned for future adoption to reduce marine life entanglement risk and improve fishery accountability.

In addition to comments received directly in response to the petition, since adoption of key management measures in 2020 to reduce marine life entanglements, the Department has received comments both in support of and in opposition to additional rules. These comments include but are not limited to those received during rulemaking in September 2020 to adopt risk reduction measures, in August 2023 to remove the sunset date on key late-season measures and implement surface gear limits, and in September 2024 to adopt line marking requirements. Those in favor of additional whale protections have supported a more aggressive approach including more restrictive late-season measures, the use of alternative gear, and implementation of in-season closures in response to real-time elevated risk and observed entanglements. Meanwhile, many crab industry representatives have raised similar concerns to those described above, including complaints that the crab fishing industry is bearing the burden of increasing entanglements that are primarily a result of increasing West Coast humpback whale abundance. Some industry representatives have supported further pot limit reductions, and a wide range of alternative approaches have been suggested.

In August 2025, ODFW hosted a pop-up gear learning exchange in Astoria, with support from Oregon Sea Grant, Oceana, Natural Resources Defense Council, and Sustainable Seas Technology. The goal of the workshop was to provide members of the Dungeness crab industry, fishery managers, and enforcement partners with an introduction to pop-up gear and an opportunity for learning and discussion with crabbers that are familiar with using the gear in other fisheries. The event was well attended with close to 50 participants representing the crab industry, enforcement, management, conservation groups, and other interested parties. There were productive conversations about the gear and interest from some industry members in testing. Many recognized that pop-up and longline gear are potential tools for maintaining opportunities to harvest Dungeness crab in times and places impacted by other entanglement risk reduction measures that have been implemented in recent years or will be considered in the future. However, this technology has not been tested off Oregon to date, and concerns were shared related to potential for gear conflicts, enforcement (e.g., of closed areas, pot limits), and costs to small businesses.

3. The complexity of the rules

Current rules related to the commercial Dungeness crab fishery balance conservation, enforceability, and fishing opportunity. The rules are not overly complex, are understood by commercial crabbers, and are enforceable by Oregon State Police. The proposed rule amendments would require significant changes to the existing fishery regulations, adding complexity to the rules.

4. The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations

The current rules do not conflict with other state rules. Oregon manages the Dungeness crab fishery in both state and adjacent federal waters through specific provisions of the Magnuson-Stevens Fishery Conservation and Management Act. ODFW is the lead management agency. No other state or local government entity has authority to regulate Dungeness crab harvest in Oregon.

Dungeness crab are not listed under the Oregon or Federal ESAs. Dungeness crab are listed in the State Wildlife Action Plan (SWAP) as a Species of Greatest Conservation Need. The current

rules support conservation actions for Dungeness crab and are consistent with the SWAP. The proposed amendments would supplement existing conservation actions identified in the SWAP for Dungeness crab, including managing commercial fisheries to ensure sustainable harvests.

The Petitioners' proposed rules may conflict with section 7 of the Wildlife Policy (ORS 496.012) and/or sections 5 to 7 of the Food Fish Management Policy (ORS 506.109), as the fiscal impacts were not adequately described in the petition and other measures that were not considered may achieve similar conservation outcomes with lower impact to the crab industry.

NOAA Fisheries has the authority to permit the incidental take of federally listed species by non-federal entities conducting otherwise lawful activities under section 10(a)(1)(B) of the ESA. They also manage incidental marine mammal interactions with commercial fisheries through authorization and reporting under the Marine Mammal Protection Act. As such, NOAA Fisheries will evaluate and ultimately determine whether the State's Conservation Plan and associated rules are sufficient for protection of whale species. Restrictions or closures of the fishery under state regulations would need to be consistent with the ITP.

5. The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule

Since adoption of the current entanglement risk reduction rules, there have been changes in the subject area affected by the rules that warrant consideration. These include changing entanglement rates, progress made towards development of a Conservation Plan, development and testing of pop-up gear technology (primarily off California and the East Coast), and improved information on humpback whale distribution off Oregon.

Confirmed entanglements

From 2013 through 2020 (when key management measures were adopted), there were six confirmed humpback whale entanglements attributed by NOAA Fisheries to Oregon commercial crab gear (0.75 per year on average). From 2021 through 2025, 11 confirmed humpback whale entanglements were attributed to Oregon crab gear (2.2 per year on average).

This increase is likely driven by a combination of factors. First, concerted efforts to improve awareness about this issue and provide outreach to ocean users have likely increased reporting and documentation of observed entanglements. Second, overall humpback whale abundance off the West Coast is estimated to be increasing by approximately 8% annually (Calambokidis and Barlow, 2020), though growth rates for the individual humpback whale stocks that comprise the West Coast population are likely variable. This coastwide population growth increases overlap and the potential for interactions with fishing gear. Finally, changing ocean conditions (e.g., whale prey distribution and abundance, crab distribution) have likely contributed to increased overlap between whales and the Dungeness crab fishery.

Conservation Plan development

Since adoption of the current rules, there has been significant progress made towards development of the Department's draft CP for reducing entanglement risk of ESA-listed species in the Oregon ocean and Columbia River commercial Dungeness crab fishery. This draft CP provides a rigorous roadmap for the implementation of measures to minimize and

mitigate entanglements, as well as monitor performance and adapt, if warranted, to ensure successful conservation outcomes.

Department staff are actively coordinating with NOAA Fisheries staff to receive their feedback on CP components, resolve any deficiencies, and ensure the draft includes all statutorily-required elements. The CP will be submitted to NOAA Fisheries as the foundation of an ITP application.

Pop-up gear development and testing

Along the West Coast, there has been and continues to be interest in pop-up gear technology, used on its own or in combination with longlined pots, as a potential tool for maintaining opportunities to harvest Dungeness crab in certain times and places where vertical line reductions are needed to reduce entanglement risk. When current rules were adopted, pop-up gear technology was untested on the West Coast, and there were significant concerns about its cost, reliability, and effectiveness.

While pop-up gear has still not been tested off Oregon to date, it is currently being tested under experimental fishing permits in California, and the California Department of Fish and Wildlife recently authorized the use of a pop-up system in the California Dungeness crab fishery during spring closures due to entanglement risk.

Ocean and weather conditions off Oregon are different than those off California, with more frequent and extreme storms, stronger currents that can submerge buoys for days (or possibly weeks) at a time, and different bottom types. Testing of pop-up and longline gear in local conditions is essential to understanding how the gear performs in Oregon waters. This year, the Department will be developing rules for the Commission's consideration establishing criteria to issue experimental fishing gear permits (EFGP), specifically for testing these gear types in Oregon waters. Similar to the past, the Department will be engaging the Oregon Entanglement Advisory and Oregon Dungeness Crab Advisory Committees to assist in the development of these rules. The proposed rules will provide for a structured program to ensure pop-up and longline gear testing takes place in a controlled manner, allows for enforcement of rules (including key fishery regulations like pot limits), and does not create conflicts with other gear in the water (e.g., conventional crab gear or mobile bottom trawl gear). It is also needed to provide clear expectations and a level playing field for crab fishery participants that might be interested in testing the gear, and to ensure that the necessary information is collected to evaluate the potential for full authorization of this gear in the future. If approved by the Commission, staff would develop the systems needed to implement this program by fall 2026, so that applications can be solicited and permits can be issued for testing by spring 2027.

Whale distribution off Oregon

Since adoption of key risk reduction measures in 2020, ongoing research has provided higher resolution information on whale distribution in Oregon waters throughout the year. Recent analysis of these data indicated that humpback whales are most frequently observed from May to November, with models predicting peak whale density over the continental shelf in August (Derville et al., 2022). These models have subsequently been used in combination with fishing effort data from commercial crab logbooks to assess co-occurrence between crab gear and whales off Oregon, and the resultant exposure of rorqual whales (including humpback, blue, and fin whales) to entanglement risk at a monthly scale from 2011-2020.

This analysis demonstrated that exposure to entanglement risk peaked in April, concurrent with the onset of the upwelling season when whale abundance was predicted to be higher and more nearshore (Derville et al., 2023). It is worth noting that those findings are on a monthly scale and don't indicate when in the month of April that peak in exposure takes place.

6. The statutory citation or legal basis for the rule

The legal basis for the current administrative rules pertaining to the Oregon commercial Dungeness crab fishery is ORS 506.036, 506.109, 506.119, 506.129, and 506.136.

Summary of Recent Actions and Planned Rulemaking for Entanglement Risk Reduction Related to These Rules

The Department has undertaken substantial and proactive efforts over multiple years to reduce marine life entanglement risk. Since 2019, these efforts have included but are not limited to adoption of key management measures in 2020, removal of sunset dates on late-season restrictions in 2023, implementation of gear marking requirements in 2024, and development of a draft CP required for an ITP under the federal ESA. These actions have been undertaken in a structured, science-based process to address entanglement risk in collaboration with industry, conservation groups, and enforcement partners.

Importantly, this process is ongoing. Staff have been preparing to bring additional measures to the Commission later in 2026, including rules to enable controlled testing of alternative (pop-up and longline) gear, require electronic vessel monitoring, and other refinements identified through adaptive management. These planned actions reflect a commitment to continuous improvement and alignment with federal requirements, ensuring that conservation goals are met while maintaining a viable fishery.

Options for achieving the existing rule's substantive goals while reducing the negative economic impact on businesses were not adequately addressed in the petition. The petition also includes rule changes in advance of and potentially inconsistent with future federal CP approval and issuance of an ITP.

The Department's planned rulemaking will provide for options that achieve the goal to reduce whale entanglement risk while reducing the negative economic impacts on industry. It would also advance immediate measures to address whale entanglement risk and inform future rulemaking.

REFERENCES

1. Calambokidis, J., and Barlow, J. 2020. Updated abundance estimates for blue and humpback whales along the U.S. West Coast using data through 2018. National Marine Fisheries Service, Southwest Fisheries Science Center, NOAA-TM-NMFS-SWFSC-634, 20 pp.
2. Derville, S., Barlow, D. R., Hayslip, C., and Torres, L. G. 2022. Seasonal, annual, and decadal distribution of three rorqual whale species relative to dynamic ocean conditions off Oregon, USA. *Frontiers in Marine Science*, 9: 1–19.
3. Derville, S., Buell, T. V., Corbett, K. C., Hayslip, C., and Torres, L. G. 2023. Exposure of whales to entanglement risk in Dungeness crab fishing gear in Oregon, USA, reveals distinctive spatio-temporal and climatic patterns. *Biological Conservation*, 281: 1- 10.

OPTIONS

1. Accept the petition and direct the Department to initiate rulemaking consistent with its planned rulemaking processes and engagement with NOAA Fisheries to obtain ESA coverage.
2. Deny the petition.

STAFF RECOMMENDATION

Option 1: Accept the petition and direct the Department to initiate rulemaking consistent with its planned rulemaking processes and engagement with NOAA Fisheries to obtain ESA coverage.

DRAFT MOTION:

I move to accept the petition and direct the Department to initiate rulemaking consistent with its planned rulemaking processes and engagement with NOAA Fisheries to obtain ESA coverage, recognizing that further rulemaking and adaptive management will continue over the following years as additional data is gathered and systems are put in place based on the 2026 regulations and based on an approved Conservation Plan and Incidental Take Permit.