

BEFORE THE OREGON FISH AND WILDLIFE COMMISSION

**PETITION TO ADOPT NEW RULES AND AMEND
OREGON ADMINISTRATIVE RULES CHAPTER 635, DIVISION 5**

Statement of Purpose:

The purpose of this petition 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.

I. Names, Addresses, and Brief Description of Petitioners

The Center for Biological Diversity

P.O. Box 11374
Portland, OR 97211-0374

Ben Grundy
Oceans Campaigner

Oceana

205 SE Spokane Street, Suite 304B
Portland, OR 97202

Ben Enticknap
Fisheries Campaign Director

NRDC

111 Sutter St.
San Francisco, CA 94104

Francine Kershaw, Ph.D.
Senior Scientist

American Cetacean Society

PO Box 51691
Pacific Grove, CA 93950

Joy Primrose
Director, ACS National Board of Directors
ACS Oregon Chapter President

The Center for Biological Diversity is a national, nonprofit conservation organization with more than 1.8 million members and online activists – and 33,172 members and supporters in Oregon—dedicated to the protection of endangered species and wild places. The Center works to secure a future for all species, great and small, hovering on the brink of extinction.

Oceana is the largest international advocacy organization dedicated solely to ocean conservation. Oceana is rebuilding abundant and biodiverse oceans by winning science-based policies in countries that control one-quarter of the world’s wild fish catch. With more than 325 victories that stop overfishing, habitat destruction, oil and plastic pollution, and the killing of threatened species like turtles, whales, and sharks, Oceana’s campaigns are delivering results. A restored ocean means that 1 billion people can enjoy a healthy seafood meal every day, forever. Together, we can save the oceans and help feed the world.

NRDC (Natural Resources Defense Council) is an international nonprofit environmental organization with more than 3 million members and online activists. Established in 1970, NRDC uses science, policy, law, and people power to confront the climate crisis, protect public health and safeguard nature. NRDC has offices in New York City, Washington, D.C., Los Angeles, San Francisco, Chicago, Beijing and Delhi (an office of NRDC India Pvt. Ltd).

The American Cetacean Society (ACS) was founded in 1967 and is recognized as the first whale, dolphin, and porpoise conservation group in the world. For over five decades, ACS has been dedicated to bringing education, current research, and critical conservation issues to people who care about cetaceans and the habitats on which they depend. We are a national non-profit organization headquartered in Pacific Grove, California, with chapters working locally in our communities.

II. Other persons known to the petitioners to be interested in the rule

None known to the petitioners other than Oregon's commercial Dungeness crab industry.

III. Petitioners' Request to Amend Existing Rules

OAR 635-005-0240: Definitions

Proposed Language in Full

As used in Division 005 regulations:

- (1) "Animals living intertidally on the bottom" means any benthic animal with a natural range that includes intertidal areas, regardless of where harvest occurs, and includes but is not limited to, starfish, sea urchins, sea cucumbers, snails, bivalves, worms, coelenterates, and crabs except Dungeness crab.
- (2) "Bait" means food fish not harvested for human consumption.
- (3) "Board" means the Commercial Fishery Permit Board.
- (4) "Buy" includes offer to buy, barter, exchange or trade.
- (5) "Catastrophic loss" means direct loss of non-deployed gear in the event of a vessel being destroyed due to fire, capsizing, or sinking. Documentation of a catastrophic loss may include any information the Department considers appropriate, such as fire department or US Coast Guard reports.
- (6) "Commercial landing cap" means the total landed catch of a given species, or species group, that may be taken in a single calendar year in Oregon commercial fisheries.
- (7) "Commercial purposes" means taking food fish with any gear unlawful for angling, or taking or possessing food fish in excess of the limits permitted for personal use, or taking, fishing for,

handling, processing, or otherwise disposing of or dealing in food fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels, as specified in ORS 506.006.

(8) "Commission" means the State Fish and Wildlife Commission created by ORS 496.090.

(9) "Crab pot" means any portable, enclosed device used to take crab with one or more gates or entrances that allows crab restricted entry and exit, ~~and has a line attached to surface floats.~~ Each crab pot must have a line attached to surface floats unless authorized as pop-up gear under OAR 635-005-0476.

(10) "Crab ring" means any fishing device used to take crab that allows crab unrestricted entry or exit while fishing, and has a line attached to surface floats.

(11) "Department" means the State Department of Fish and Wildlife.

(12) "Derelict Dungeness crab gear" means Dungeness crab gear which was lost, forgotten, damaged, abandoned or otherwise deserted.

(13) "Director" means the Director of the Oregon Department of Fish and Wildlife appointed pursuant to ORS 496.112.

(14) "Dive gear" means gear used while a fisher is submerged underwater in order to take food fish, and includes but is not limited to one or more of the following equipment: SCUBA or other surface supplied air source (hookah gear), dive mask, snorkel, air cylinders, weight belt, wetsuit and fins.

(15) "Dungeness crab gear" means crab pots, crab rings or a combination thereof used for taking Dungeness crab.

(16) "Exclusive Economic Zone" means the zone between 3-200 nautical miles offshore of the United States.

(17) "Fishing gear" means, as specified in ORS 506.006, any appliance or device intended for or capable of being used to take food fish for commercial purposes, and includes:

(a) "Fixed gear" means longline, trap or pot, set net, and stationary hook-and-line (including vertical hook-and-line) gears;

(b) "Gillnet" has the meaning as set forth in OAR 635-042-0010;

(c) "Hook-and-line" means one or more hooks attached to one or more lines;

(d) "Lampara net" means a surrounding or seine net with the sections of netting made and joined to create bagging, and is hauled with purse rings;

(e) "Longline" means a stationary buoyed, and anchored groundline with hooks attached;

- (f) “Mesh size” means the opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot regardless of twine size;
- (g) “Pot or trap” means a portable, enclosed device with one or more gates or entrances ~~and one or more lines attached to surface floats~~. Each pot or trap must have one or more lines attached to surface floats unless authorized as pop-up gear under OAR 635-005-0476.
- (h) “Purse seine” means a floated and weighted encircling net that is closed by means of a purse line threaded through rings attached to the bottom of the net. Purse seine gear includes, but is not limited to, ring net, drum purse seine, and lampara nets;
- (i) “Seine” means any non-fixed net other than a trawl or gillnet and includes all types of purse seines;
- (j) “Setline” means a bottom longline used in rivers and estuaries for targeting white sturgeon;
- (k) “Set net” means a stationary, buoyed and anchored gillnet or trammel net which takes fish commonly by gilling and is not free to move or drift with the current or tide;
- (l) “Spear” means a sharp, pointed, or barbed instrument on a shaft;
- (m) “Trammel net” means a gillnet made with two or more walls joined to a common float line;
- (n) “Trawl gear” means a cone or funnel-shaped net which is towed or drawn through the water by one or two vessels, and includes but is not limited to beam trawl, bobbin or roller trawl, bottom trawl, pelagic trawl and Danish and Scottish seine gear;
- (o) “Troll” means fishing gear that consists of one or more lines that drag hooks with bait or lures behind a moving fishing vessel, and which lines are affixed to the vessel and are not disengaged from the vessel at any time during the fishing operation; and
- (p) “Vertical hook and line” means a line attached to the vessel or to a surface buoy vertically suspended to the bottom by a weight or anchor, with hooks attached between its surface and bottom end.
- (q) “Pop-up gear” means a pot or trap or strings of pots or traps in which the surface float and any attached lines remain at depth until retrieval, as authorized pursuant to OAR 635-005-0476, and that uses sinking or neutral groundline to connect pots or traps that each have a tag identifying the permit holder.
- (r) “Conventional gear” means fishing gear that is not pop-up gear.
- (18) “Fishing trip” means a dock-to-dock transit during which fishing for commercial purposes occurs, and is followed by a landing.

(19) “Food Fish” means any animal over which the State Fish and Wildlife Commission has jurisdiction pursuant to ORS 506.036.

(20) “Groundfish” means all species of ocean food fish defined as groundfish in the Pacific Coast Groundfish Fishery Management Plan and in the Federal Groundfish Regulations, Title 50, Part 660 (See OAR 635-004-0240).

(21) “Intertidal” means the area in Oregon coastal bays, estuaries, and beaches between mean extreme low water and mean extreme high water boundaries.

(22) “Land, Landed or Landing” means either of the following:

(a) For fisheries where food fish were taken by use of a vessel, “land, landed or landing” means to begin transfer of food fish from a vessel. Once transfer begins, all food fish on board the vessel are counted as part of that landing, except anchovies being held live on a vessel for the purpose of using for bait in that vessel’s commercial fishing operation; and

(b) For fisheries where food fish were taken without use of any vessel, “land, landed or landing” means to begin transfer of food fish from a harvester to a wholesale fish dealer, wholesale fish bait dealer, or food fish canner, under which the following provisions apply:

(A) When the harvester and the wholesale fish dealer, wholesale fish bait dealer, or food fish canner are the same person or entity, transfer occurs when the food fish arrive at the licensed premises of the wholesale fish dealer, wholesale fish bait dealer, or food fish canner; and

(B) Once transfer begins, all food fish from the harvest area are counted as part of that landing.

(23) “Length” or “Overall Length” of a vessel means the manufacturer’s specification of overall length, United States Coast Guard or Marine Board registered length documentation stating overall length or overall length as surveyed by a certified marine surveyor. In determining overall length, marine surveyors shall measure in a straight line parallel to the keel from the foremost part of the vessel to the aftermost part, excluding sheer and excluding bow sprits, boomkins, rudders aft of the transom, outboard motor brackets, or transom extensions as in a dive step or platform.

(24) “Ocean Dungeness Crab fishing season” means the period normally from December 1 of one year through August 14 of the next year and is specific to the ocean Dungeness crab fishery. In periods where a season delay occurs, “ocean Dungeness crab fishing season” means from the date the fishery opens to the following August 14.

(25) “Oyster” includes oysters, oyster seed, oyster cultch, and oyster shell.

(26) “Pacific Ocean” means all water seaward of the end of the jetty or jetties of any river, bay, or tidal area, except the Columbia River boundary with the Pacific Ocean is as specified in OAR 635-003-0005, or all water seaward of the extension of the shoreline high watermark across the river, bay, or tidal area where no jetties exist.

(27) "Permit holder" means a person or entity that owns an individual permit or owns the vessel to which a vessel permit is attached. A lessee of a permit is not a permit holder.

(28) "Possession" means holding any food fish, shellfish or parts thereof in a person's custody or control.

(29) "Process or Processing" means fresh packaging requiring freezing of food fish, or any part thereof, or any type of smoking, reducing, loining, steaking, pickling or filleting. Cooking crab is not considered processing.

(30) "Replacement vessel" is a vessel purchased to replace a Limited Entry permitted vessel which has been lost due to fire, capsizing, sinking or other event.

(31) "Resident" means an actual bona fide resident of this state for at least one year, as specified in ORS 508.285.

(32) "Salmon" means all anadromous species of salmon, including but not limited to:

(a) *Oncorhynchus gorbuscha*, commonly known as humpback, humpies or pink salmon.

(b) *Oncorhynchus keta*, commonly known as chum or dog salmon.

(c) *Oncorhynchus kisutch*, commonly known as coho or silver salmon.

(d) *Oncorhynchus nerka*, commonly known as sockeye, red or blueback salmon.

(e) *Oncorhynchus tshawytscha*, commonly known as Chinook salmon.

(33) "Security interest" means an interest in a vessel or permit granted by the owner of the vessel or permit to a third party under a security agreement, pursuant to ORS chapter 79, another state's laws enacted to implement Article 9 of the Uniform Commercial Code or equivalent federal statutory provisions for federally documented vessels.

(34) "Seine skiff" means an open vessel which travels with a larger fishing vessel at all times and is used solely at the direction of the operator of the larger fishing vessel to assist that larger fishing vessel in the deployment and retrieval of seine nets to take fish.

(35) "Sell" includes to offer or possess for sale, barter, exchange or trade.

(36) "Shared Ecosystem Component Species" means those ecosystem component species shared between all of the Pacific Fishery Management Council's Fishery Management Plans which occur in the Pacific Ocean off Oregon and include:

(a) Mesopelagic fishes of the families Myctophidae, Bathylagidae, Paralepididae, and Gonostomatidae;

(b) Pacific sand lance (*Ammodytes personatus*, previously *Ammodytes hexapterus*);

(c) Pacific saury (*Cololabis saira*);

(d) Silversides of the family Atherinopsidae;

(e) Smelts of the family Osmeridae; and

(f) Pelagic squids of the families Cranchiidae, Gonatidae, Histioteuthidae, Octopoteuthidae, Ommastrephidae except Humboldt squid (*Dosidicus gigas*), Onychoteuthidae, and Thysanoteuthidae.

(37) "Shellfish Sanitation Certificate" means a license required by Oregon Department of Agriculture to engage in business of harvesting, distributing or processing of oysters, clams, mussels and scallops for human consumption.

(38) "Special Regulation Marine Areas" means specific areas described in OAR 635-039-0090 and the "Oregon Sport Fishing Regulations," which includes all Marine Gardens, Subtidal Research Reserves, Intertidal Research Reserves, Habitat Refuges, and other areas closed to designated activities.

(39) "Take" means fish for, hunt, pursue, catch, capture or kill or attempt to fish for, hunt, pursue, catch, capture or kill.

(40) "Transport" means transport by any means, and includes offer or receive for transportation.

(41) "Trip limit" means the total amount of fish that may be taken and retained, possessed, or landed per vessel from a single fishing trip or cumulatively per unit of time. A vessel which has landed its cumulative or daily limit may continue to fish on the limit for the next legal period as long as the fish are not landed until the next period. Trip limits may be:

(a) "Bi-monthly cumulative trip limit" means the maximum amount of fish that may taken and retained, possessed or landed per vessel in specified bi-monthly periods. There is no limit on the number of landings or trips in each period, and periods apply to calendar months. The specified periods are as follows:

(A) Period 1: January through February;

(B) Period 2: March through April;

(C) Period 3: May through June;

(D) Period 4: July through August;

(E) Period 5: September through October; and

(F) Period 6: November through December.

(b) "Daily trip limit" means the maximum amount of shellfish that may be taken and retained, possessed or landed per vessel in 24 consecutive hours, starting at 00:01 hours local time;

(c) “Monthly trip limit” means the maximum amount of fish that may be taken and retained, possessed or landed per vessel during the first day through the last day of any calendar month.

(d) “Weekly trip limit” means the maximum amount of fish that may be taken and retained, possessed or landed per vessel in 7 consecutive days, starting at 00:01 hours local time on Sunday and ending at 24:00 hours local time on Saturday. Weekly trip limits may not be accumulated during multiple week trips. If a calendar week falls within two different months or two different cumulative limit periods, a vessel is not entitled to two separate weekly limits during that week.

(42) “Undue hardship” means death, serious illness requiring extended care by a physician, permanent disability, or other circumstances beyond the individual’s control.

(43) “Unlawful to buy” means that it is unlawful to buy, knowing or having reasonable cause to believe that the fish have been illegally taken or transported within this state, or unlawfully imported or otherwise unlawfully brought into this state.

(44) “Vessel” means any floating craft, powered, towed, rowed or otherwise propelled which is used for landing or taking food fish for commercial purposes.

(45) “Vessel operator” means the person onboard a fishing vessel who is responsible for leading a fishing vessel in fishing or transit operations, and who signs the corresponding fish ticket from that fishing trip. A vessel operator may be a vessel owner or permit holder or both, individual hired to operate a vessel, or lessee of a vessel, permit or both. Although more than one person may physically operate a vessel during a fishing trip or transit, there may only be one person identified as a vessel operator (commonly referred to as a captain or skipper) on a fishing vessel during any one fishing trip or transit.

(46) “Vessel owner” means any ownership interest in a vessel, including interests arising from partnerships, corporations, limited liability corporations, or limited liability partnerships. A vessel owner does not include a leasehold interest.

(47) “Waters of this state” means all waters over which the State of Oregon has jurisdiction, or joint or other jurisdiction with any other state or government, including waters of the Pacific Ocean and all bays, inlets, lakes, rivers and streams within or forming the boundaries of this state.

OAR 635-005-0275: Commercial Shellfish and Marine Invertebrates Fishing Gear

Proposed Language in Full

(1) This regulation lists a complete set of legal gear types and associated general restrictions to take shellfish and marine invertebrates in the fisheries specified in this Division. However, most individual fisheries listed in this Division are restrained additionally by supplemental regulations

specific to those fisheries. Fishers should consult the specific section of the fishery they are interested in for additional regulations.

(2) It is unlawful to possess, deploy, haul, or carry on board a fishing vessel any fishing gear not listed in section (3) of this rule, or fishing gear not in compliance with the restrictions listed in section (4) of this rule, unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution from Ships, 1973 (Annex V of MARPOL 73/78).

(3) It is unlawful to take shellfish and invertebrates for commercial purposes by any means except:

(a) Hook-and-line gear, including, but not limited to handline, pole-and-line, reel-and-line and pole-reel-and-line;

(b) Longlines and vertical hook and lines are permitted in the ocean;

(c) Pots or traps (including pot longline gear) and authorized pop-up gear under OAR 635-005-0476 are permitted in the ocean;

(d) Rings;

(e) Dipnets of hoop or A-frame design;

(f) Seines are permitted in the ocean;

(g) Trawl gear is permitted in the ocean;

(h) Trawl gear shall not be used with any other gear type on a single fishing trip.

(i) Set nets are allowed with an experimental gear permit pursuant to OAR 635-006-0020;

(j) Spear is permitted in the ocean;

(k) Dive gear; or

(l) By hand or hand powered methods including shovel, rake, and abalone iron.

(4) Longline, vertical hook-and-line and pot gear other than Dungeness crab gear and crayfish pots or ring nets which is fixed or anchored to the bottom or drifting unattached to the vessel have the following restrictions:

(a) Gear shall not be left unattended for more than seven days;

(b) Pot longline gear shall be marked at the surface and at each terminal end with a pole, flag, light, radar reflector, and a buoy showing clear identification of the owner or operator;

(c) Pot gear used for other than Dungeness crab, hagfish or spot or coonstripe shrimp shall have biodegradable escape panels constructed with #21 or smaller, untreated cotton twine in such manner that an opening at least eight inches in diameter will result when the twine deteriorates.

(5) Unless using pop-up gear authorized pursuant to OAR 635-005-0476, Fixed gear, other than crayfish pots or ring nets, must be marked with a surface buoy bearing, in a visible, legible and permanent manner, a number clearly identifying the owner or operator of the vessel. The number may be either:

(a) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(b) The vessel documentation number issued by the U.S. Coast Guard, or, for an undocumented vessel, the vessel registration number issued by the state.

(6) It is unlawful to use fixed gear that has on any part of the gear line marks or multi-colored line required for any state or federal fishery operating in the U.S. West Coast EEZ or in the state waters of Washington, Oregon, or California, other than the fishery the gear is being used in.

OAR 635-005-0405: Requirement for Ocean Dungeness Crab Permit

Proposed Language in Full

(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, from ~~May 1~~ April 1 through August 14 each year until 2028, when OAR 635-005-0460(3) applies, the amount of Dungeness crab gear allocated to a permit required under section (1) of this rule shall be reduced to ~~80 percent~~ 60 percent of the amount allocated under section (5) of this rule. This 40% late-season reduction in gear allocation applies to conventional gear only. A permit assigned a Dungeness crab gear allocation per section (5) of this rule of:

- (a) 200 shall be assigned a Dungeness crab conventional gear allocation of ~~160~~120;
- (b) 300 shall be assigned a Dungeness crab conventional gear allocation of ~~240~~180; or
- (c) 500 shall be assigned a Dungeness crab conventional gear allocation of ~~400~~300.

OAR 635-005-0460: Harvest Areas – Dungeness Crab Fishery

Proposed Language in Full

(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) From ~~May 1~~April 1 through August 14 each year until 2028, when OAR 635-005-0460(3) applies, it is *unlawful* to place, operate, or leave commercial Dungeness crab conventional gear seaward of the ~~40 fathom~~30 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 conventional gear found seaward of the ~~40 fathom~~30 fathom depth contour from ~~May 21~~April 7 through August 14 shall be considered derelict and may be retrieved per 635-005-0490.

(3) Effective April 1, 2028, it shall be unlawful to take Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River using conventional gear from April 1 until August 14.

OAR 635-005-0480: Dungeness Crab Conventional Gear Buoy Tag and Gear Marking Requirements

Proposed Language in Full

Unless using pop-up gear authorized pursuant to OAR 635-005-0476, 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) Except for replacement buoy tags, all other 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;

- (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.
- (c) Under a waiver granted by the Department to allow the activities described in this subsection. Waiver requests must be in writing and a waiver must be approved and issued prior to conducting the activity. A copy of the waiver must be on board the vessel conducting the activity. A waiver may be granted by the Department for a:
- (A) One time change of buoy tags for gear deployed at sea associated with a Dungeness crab permit transfer under OAR 635-005-0440;
 - (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 at sea to different crab pots or rings owned by the same vessel making the change. The vessel making the change 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) When retrieving derelict Dungeness crab gear as pursuant to OAR 635-005-0490 or 635-005-0491;
- (e) 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
- (f) When operating crab rings in bays or estuaries, only a tag affixed to the individual ring is required.

(3) From ~~May 1~~April 1 through August 14 each year until 2028, when OAR 635-005-0460(3) applies, 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 from ~~May 1~~April 7 through August 14 shall be considered derelict and may be retrieved per OAR 635-005-0490;

(g) Starting in 2028, when OAR 635-005-0460(3) applies, any commercial Dungeness crab gear found in the ocean or Columbia River from April 7 through August 14 shall be considered derelict and may be retrieved per OAR 635-005-0490;

(4) Until 2028, when OAR 635-005-0460(3) applies, ~~From May 1~~April 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.

(5) Use Dungeness crab gear with line other than dual-colored yellow and black line, with the majority of strands colored yellow and at least 1/3 of strands colored black, as follows:

(a) Effective December 1, 2026:

(A) For all line used between any two buoys, except buoy gangions that are less than four feet long may be any color. A buoy gangion is defined as line that passes through, and is affixed to, the buoy forming loops on each end of the buoy. The length of a buoy gangion is measured in a straight line between the opposing loop ends;

(B) For gear with a single buoy or no line other than buoy gangions of less than four feet connecting multiple buoys, for all line within six feet of the attachment point of the buoy closest to the pot or ring, extending toward the crab pot or ring;

(b) Effective December 1, 2028, for all line within 90 feet of the attachment point of the buoy closest to the crab pot or ring extending toward the crab pot or ring, except up to 30 feet of line closest to the crab pot or ring may be any color;

(c) Effective December 1, 2026, or December 1, 2028, as applicable, and through August 14, 2033, line with solid yellow and black marks meeting the following specifications may be substituted for dual-colored yellow and black line required by this rule:

(A) Each set of marks shall cover the entire length and circumference of at least four feet of line with at least two feet yellow within six inches of at least two feet black;

(B) Marks shall be regularly serviced and maintained in a condition to readily identify the line marking scheme of yellow and black;

(C) Effective December 1, 2026:

(i) Line between any two buoys must have at least one set of marks; and

(ii) For gear with a single buoy or no line other than buoy gangions of less than four feet connecting multiple buoys, line must have one set of marks within six feet of the buoy; and

(D) Effective December 1, 2028, the 90 feet of line measured from the attachment point of the buoy closest to the crab pot or ring extending toward the crab pot or ring must have at least three sets of marks. Sets of marks shall be distributed such that one set of marks is near each end and one set of marks is near the middle of this 90-foot section of line.

OAR 635-005-0485: Dungeness Crab Gear Prohibitions

Proposed Language in Full

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, unless using pop-up gear authorized pursuant to OAR 635-005-0476.

(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 than the following:

(a) One main buoy, meaning the buoy closest to the crab pot or ring;

(b) Two trailer buoys;

(c) A distance greater than 36 feet between the front end of the main buoy to the tail end of the last trailer buoy. End marker buoys are not considered trailer buoys; and

(d) One end marker buoy which shall not:

(A) Extend more than three feet in length behind the last trailer buoy; or

(B) Be larger than five inches in diameter.

IV. Petitioners' Request to Adopt New Rules

OAR 635-005-0236: Entanglement Transparency and Accountability

Proposed Language in Full

(1) The Department shall provide a public notice of any marine mammal or sea turtle entanglement in Oregon within 48 hours of receiving a report. This requirement also applies to waters outside of the state where fishing gear or marine debris attributed to the state caused an entanglement.

- (2) All notices of marine mammal and sea turtle entanglements shall be publicly available on the Department's website and immediately updated as information becomes available.
- (3) Public notices shall include and be updated with the following information:
- (a) Date of the incident
 - (b) Species entangled
 - (c) Entangling material, including any fishery and gear type involved
 - (d) Incident Location
 - (e) Set Location (County)
 - (f) Fishing season in which the gear was set
- (4) During the 48 hours prior to initial public notice, the Department shall make its best efforts and use all available information to identify the material entangling the animal and, if the material is fishing gear, to identify the fishery and gear type.
- (5) At the time of initial public notice, and with immediate updates as information becomes available, the Department shall provide all available information regarding the material entangling the animal, using the following categories alone or in combination for mixed material:
- (a) "Oregon Fishing Gear" if the material includes Oregon fishing gear, in which case the Department shall further identify the fishery and gear type involved.
 - (b) "Non-Oregon Fishing Gear" if the entangling material is identifiable fishing gear of another state or fishery;
 - (c) "Unidentified Fishing Gear" if the entangling material is identifiable as fishing gear but cannot be attributed to any fishery;
 - (d) "Other Marine Debris" if the entangling material is identifiable as something other than fishing gear.
 - (e) "Unknown Material" if the entangling material has not yet been determined to fall into any of the above categories.
- (6) If a determination is made that the entangling material included lost, abandoned, or derelict fishing gear, the gear shall additionally be documented as "Ghost Gear."

OAR 635-005-0401: Unauthorized Take Emergency Procedures – Dungeness Crab

Proposed Language in Full

(1) In the event of one confirmed entanglement in Oregon Dungeness crab gear of a federal Endangered Species Act-listed animal, or two or more confirmed entanglements of federal Endangered Species Act-listed animals in unknown gear that may be Oregon Dungeness crab gear, the Director shall immediately implement a conventional gear fishing closure for the duration of the fishing season in at least one of these three zones, selecting the area with the highest risk of entanglement based on the best available science:

(a) Oregon/ Washington border (46° 16.00'N) to Cape Falcon (45° 46.00'N)

(b) Cape Falcon to Cape Arago (43° 20.83'N)

(c) Cape Arago to the Oregon/ California border (42° 00.00'N)

(2) If the number of confirmed entanglements of federal Endangered Species Act-listed animals in Oregon Dungeness crab gear reaches two during the season, a statewide fishery closure must be imposed.

(3) Until 2028, when OAR 635-005-0460(3) applies, in the event one or more federal Endangered Species Act-listed animals is confirmed entangled in Oregon commercial Dungeness crab gear after the close of the fishing season, the Director shall implement a conventional gear fishing closure in at least one of these three zones starting April 1 through August 14 the following year, selecting the area with the highest risk of entanglement based on the best available science.

OAR 635-005-0476: Pop-up Gear Authorization

Proposed Language in Full

(1) Upon written request for authorization of the use of pop-up gear, within 60 days the department shall authorize use of that pop-up gear to take Dungeness crab for commercial purposes.

(2) The written request for pop-up gear authorization submitted to the Department shall include information describing how the pop-up gear accomplishes the following goals:

(a) Detectable: Pop-up gear must be detectable by law enforcement and fishing vessels via an electronic marker accessible through a virtual tracking system.

(b) Retrievable: Pop-up gear must be retrievable by the permit holder to minimize gear loss and ghost gear. Law enforcement also must be able to retrieve and redeploy the gear.

(c) Identifiable: Pop-up gear must allow law enforcement to link it to the permit holder both remotely and when submerged and at the surface, through both physical tagging and electronic marking.

V. Rationale for the Proposed Changes

The Oregon Fish and Wildlife Commission (OFWC) must adopt additional regulations to prevent the Oregon commercial Dungeness crab fishery from entangling protected species. This fishery takes humpback whales without a federal Endangered Species Act incidental take permit, which means each entanglement violates the law. We recommend the OFWC adopt regulations that minimize the risk of entanglement in commercial Dungeness crab fishing gear by:

Amending Chapter 635, Division 5 of the Oregon Administrative Rules to further restrict the use of trap gear with conventional vertical buoy lines during the commercial Dungeness crab fishery's late-season, to remove regulatory barriers and facilitate the authorized use of pop-up fishing gear, and to establish transparency and accountability regarding entanglements.

The proposed regulations are necessary to reduce the risk of serious injury and mortality of protected whales and sea turtles. In support of the proposed regulations, Petitioners describe (1) the entanglement problem that the regulations address, (2) the legal basis and authority for the regulations, (3) the scientific basis for the proposed gear restrictions, and (4) the data supporting the efficacy of pop-up fishing gear.

The Oregon Dungeness Crab Fishery Harms Protected Species

Conventional fishing gear used in the commercial Dungeness crab fishery is entangling, injuring, and killing protected marine animals. The vertical buoy lines that run from a trap set on the seafloor through the water column to a buoy at or near the surface puts swimming marine animals at risk of entanglement. When animals are entangled, heavy fishing rope—often still connected to even heavier traps—can wrap around the animal’s head, mouth, flippers, or tail, sometimes preventing the animal from resurfacing, resulting in drowning. If entangled animals do not immediately drown, the remaining entangling line often impedes basic movement, feeding, and reproduction, and causes chronic infection and damage to bone and muscle.

Entanglements not only cause these animals immense suffering but threaten the very existence of numerous imperiled species such as critically endangered North Pacific right whales,¹ and Pacific leatherback sea turtles.² Fishing gear also harms humpback whales,³ gray whales,⁴ orcas,⁵ and fin whales.⁶

In 2024, along the U.S. West Coast, there were a total of 36 whale entanglements, marking the highest number of confirmed entanglement reports since 2018.⁷ Off the coast of Oregon, the National Marine Fisheries Service (NMFS) confirmed reports of three humpback

¹ NOAA Fisheries. 2023 Stock Assessment Report: Right Whale (Eastern North Pacific Stock). NMFS (2024). p. 294. https://www.fisheries.noaa.gov/s3/2024-12/2023_SAR_North_Pacific_Right_Whale_Eastern_NP_Stock.pdf.

² Endangered and Threatened Species: Final Rule To Revise the Critical Habitat Designation for the Endangered Leatherback Sea Turtle, 77 Fed. Reg. 4,170 (Jan. 26, 2012). <https://www.federalregister.gov/d/2012-995>.

³ NOAA Fisheries. 2021 Stock Assessment Report: Humpback Whale (California-Oregon-Washington Stock). NMFS (2022). p. 178-179. <https://media.fisheries.noaa.gov/2022-08/2021-HumpbackWhale-CaliforniaOregonWashington%20Stock.pdf>.

⁴ NOAA Fisheries. 2020 Stock Assessment Report: Gray Whale (Eastern North Pacific Stock). NMFS (2021). P.165-167. <https://www.fisheries.noaa.gov/s3/2021-08/2020-Pacific-SARS-Eastern-GrayWhale-dragged-.pdf>.

⁵ NOAA Fisheries. The Mystery of the Entangled Oregon Orca. (2022), <https://www.fisheries.noaa.gov/feature-story/mystery-entangled-oregon-orca>.

⁶ NOAA Fisheries. 2023 Stock Assessment Report: Fin Whale (California-Oregon-Washington Stock). NMFS (2024). p. 215. <https://www.fisheries.noaa.gov/s3/2024-12/2023-sar-Fin-CAORWA.pdf>.

⁷ NOAA Fisheries. 2024 West Coast Whale Entanglement Summary. NMFS (2025), p. 1. <https://www.fisheries.noaa.gov/s3//2025-04/2024-whale-entanglements-report.pdf>.

whale entanglements and one fin whale entanglement in 2024.⁸ So far in 2025 there have been four reported entanglements in Oregon commercial Dungeness crab fishing gear. Most recently a humpback whale stranded on November 15, 2025, in gear attributed to the 2023-2024 season.⁹ A whale sighted in September and October was entangled in gear possibly from the 2022-23 Oregon Dungeness crab season. These entanglements are likely only a fraction of the actual number of animals that are seriously injured or killed in Oregon fishing gear because most entanglements go unobserved.¹⁰ NMFS's estimates of true entanglements may be five times as high as reported entanglements.¹¹

⁸ *Id.*

⁹ Sherwood, C. Euthanized humpback whale removed from Oregon Coast beach, OPB, Nov. 19, 2025, <https://www.opb.org/article/2025/11/19/oregon-coast-euthanized-whale-removed-beach/>

¹⁰ Derville, S. et al., Exposure of whales to entanglement risk in Dungeness crab fishing gear in Oregon, USA, reveals distinctive spatio-temporal and climatic patterns, 281 *Biological Conservation* 109989 (2023). <https://doi.org/10.1016/j.biocon.2023.109989>.

¹¹ Moore, J. and J. Greenman, Integrating multiple information types to improve estimates of large whale entanglement mortality and serious injury, NOAA Fisheries Presentation at the Marine Mammal Commission Meeting (Sept. 2025), https://www.mmc.gov/wp-content/uploads/3_Moore-humpback-entanglement-estimation-for-MMC-Sept-2025.pdf.

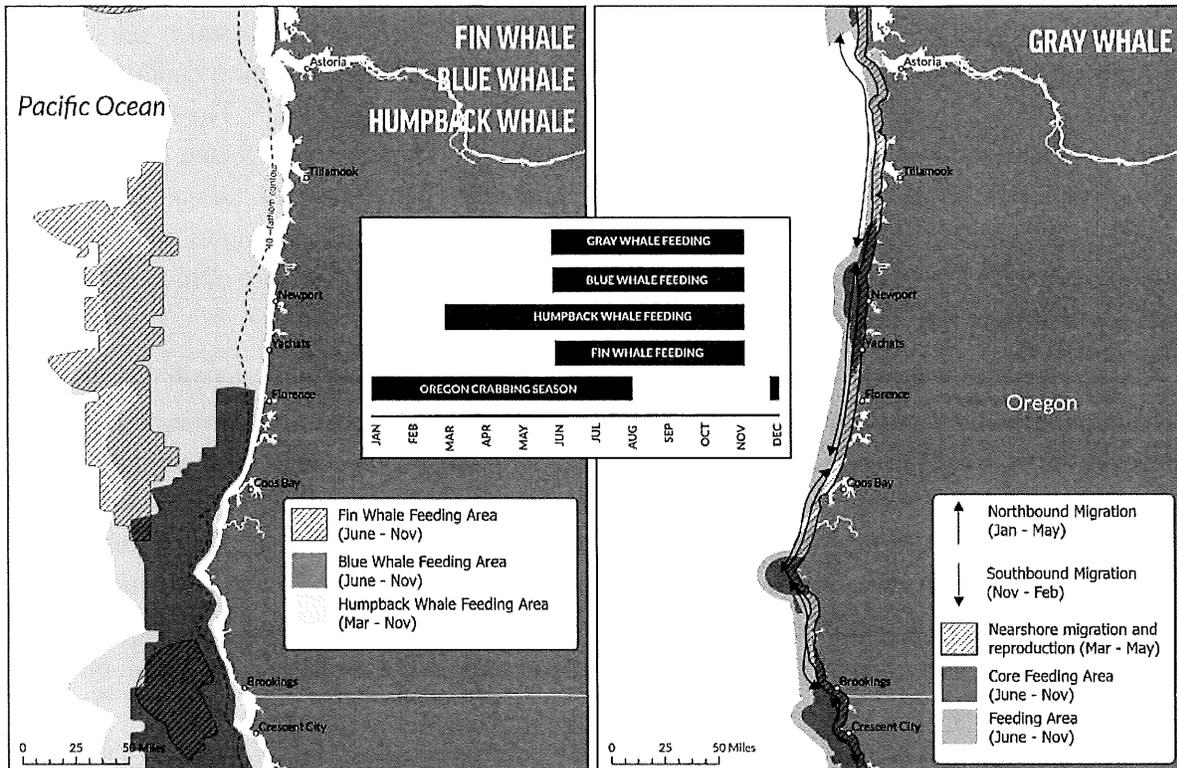


Figure 1: Maps of Biologically Important Areas¹² for Fin whales, Blue Whales, Humpback whales and Gray Whales off Oregon (map: Oceana).

Federal Law Prohibits Take of Marine Mammals and Sea Turtles

Oregon’s authorization of fisheries that entangle protected whales and sea turtles without valid authorization from the federal government violates the federal Endangered Species Act and Marine Mammal Protection Act. Congress enacted the Endangered Species Act “to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, [and] to provide a program for the conservation of such . . . species.”¹³ Section 9 of the Endangered Species Act prohibits any “person” from “taking” or causing take of any member of an endangered species, including endangered whales and sea turtles.¹⁴ This take prohibition also applies to threatened whales.¹⁵

¹² Calambokidis J, Kratofil MA, Palacios DM, Lagerquist BA, Schorr GS, Hanson MB, Baird RW, Forney KA, Becker EA, Rockwood RC and Hazen EL (2024) Biologically Important Areas II for cetaceans within U.S. and adjacent waters - West Coast Region. *Front. Mar. Sci.* 11:1283231. doi: 10.3389/fmars.2024.1283231

¹³ 16 U.S.C. § 1531(b)

¹⁴ See 50 C.F.R. § 17.11(h).

¹⁵ *Id.* § 223 Subpart B.

The Endangered Species Act broadly defines “take” to include “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect” or to attempt to engage in such conduct.¹⁶ “Take” includes both direct and indirect harm and it need not be purposeful.¹⁷ The take prohibition applies to any “person,”¹⁸ including state, county, or municipal agencies and/or officials in their official capacity.¹⁹ The Act further makes it unlawful for any person, including state agencies and/or state officials in their official capacity, to “cause to be committed” the take of a listed species.²⁰ Similarly, the failure to regulate in a way that avoids take of listed species can also constitute a prohibited section 9 take.²¹

Congress enacted the Marine Mammal Protection Act to address the concern that “certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man’s activities,” and to help “protect[] and encourage[]” marine mammals “to develop to the greatest extent feasible.”²² “The interest in maintaining healthy populations of marine mammals comes first” under the statute.²³ To promote its objectives, the Act establishes a general moratorium on the taking of marine mammals,²⁴ expressly prohibiting the unauthorized take of a marine mammal by any person.²⁵ Prohibited takings include actions that kill or injure marine mammals and those that disrupt migration, breathing, breeding, or feeding patterns.²⁶

In August 2021, Oregon developed a draft Conservation Plan in support of an incidental take permit application under section 10(a)(1)(B) of the Endangered Species Act to authorize Oregon’s ocean and Columbia River commercial Dungeness crab fishery’s interactions with humpback whales, blue whales, and leatherback sea turtles.²⁷ Without approval of the Plan by the federal government, Oregon continues to violate federal law.

¹⁶ 16 U.S.C. § 1532(19); see also *Babbitt v. Sweet Home Chapter of Cmty. for a Great Or.*, 515 U.S. 687, 704-05 (1995) (finding that the Act’s legislative history supports “the broadest possible” reading of the prohibition against take).

¹⁷ *Sweet Home*, 515 U.S. at 704.

¹⁸ 16 U.S.C. § 1538(a)(1).

¹⁹ *Id.* § 1532(13).

²⁰ *Id.* § 1538(g).

²¹ *Animal Prot. Inst. v. Holsten*, 541 F. Supp. 2d 1073, 1078-1080 (D. Minn. 2008)

²² 16 U.S.C. § 1361(1), (6).

²³ *Kokechik Fishermen’s Ass’n v. Sec’y of Comm.*, 839 F.2d 795, 800, 802 (D.C. Cir. 1988).

²⁴ 16 U.S.C § 1371(a).

²⁵ *Id.* § 1372(a)

²⁶ 16 U.S.C. § 1362(13), (18).

²⁷ ODFW, DRAFT Conservation plan for reducing the impact of the Oregon ocean commercial Dungeness crab fishery on ESA-listed species off Oregon (2021), <https://www.dfw.state.or.us/MRP/entanglement/>

The Oregon Fish and Wildlife Commission’s Duty to Protect Wildlife and Habitat

The state has an obligation to prevent its fisheries from taking protected species. Not only must the OFWC come into compliance with the federal Endangered Species Act, it also has an independent duty under state law to protect wildlife. The OFWC must immediately promulgate robust mitigation measures that prevent entanglements of marine life.

The OFWC holds a foundational role in the stewardship of the state’s fish and wildlife resources. Section 496.012 of the Oregon Revised Statutes (ORS) establishes that “[i]t is the policy of the State of Oregon that wildlife shall be managed to prevent serious depletion of any indigenous species and to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of this state.”²⁸ The policy further requires the state to represent the public interest by following coequal goals of wildlife management which includes: 1) maintaining all species of wildlife at optimum levels, 2) developing and managing lands and waters to enhance the production and public enjoyment of wildlife, 3) regulating wildlife populations and the public enjoyment of wildlife in a manner compatible with the primary uses of lands and waters, 4) making decisions that affect wildlife resources of the state for the benefit of the wildlife resources and that allow for the best social, economic and recreational utilization of wildlife resources by all user groups.²⁹ Moreover, Oregon’s Wildlife Diversity Plan or “State Wildlife Action Plan” (SWAP) provides guidance for the Oregon Department of Fish and Wildlife and other agencies to meet the goal of “maintain[ing] Oregon's wildlife diversity by protecting and enhancing populations and habitats of native wildlife at self-sustaining levels throughout natural geographic ranges.”³⁰ Objectives of the Wildlife Diversity program include assessing, conserving, and enhancing wildlife habitats and minimizing adverse biological, social and economic impacts resulting from interactions between people and wildlife.³¹ Adopting the proposed regulations to reduce the risk of injuring and killing species protected under the Oregon Endangered Species Act and federal Endangered Species Act aligns with the conservation goals of the state and responsibilities of the Commission and Department.

The Oregon Fish and Wildlife Commission’s Authority to Adopt the Proposed Regulations

The OFWC has authority to adopt the proposed changes in this petition. The Commission’s authority to enact the proposed regulatory amendments—including the authorization of pop-up gear—is clearly established in Chapter 506, Section 506.119 of the Oregon Revised Statutes. Section 506.119 empowers the Commission:

“(1) The State Fish and Wildlife Commission has the authority to formulate and implement the policies and programs of this state for the management of food fish, and may

²⁸ ORS § 496.012.

²⁹ *Id.*

³⁰ OAR § 635-100-0010.

³¹ OAR § 635-100-0015.

perform all acts necessary to administer and carry out the provisions of the commercial fishing laws.

“(2) In accordance with any applicable provision of ORS chapter 183, the commission may promulgate rules to carry out the provisions of the commercial fishing laws.”

VI. Evaluation of the proposed rule changes

A. Rule Changes Supporting the Authorization of Pop-up Fishing Gear

This section applies to the following regulations:

- OAR 635-005-0240 (“Definitions”)
- OAR 635-005-0275 (“Commercial Shellfish and Marine Invertebrates Fishing Gear”)
- OAR 635-005-0480 (“Dungeness Crab Buoy Tag and Gear Marking Requirements”)
- OAR 635-005-0485 (“Dungeness Crab Gear Prohibitions”)
- OAR 635-005-0476 (“Pop-up Gear Authorization”) (NEW RULE)

The proposed amendments to the above sections of the Oregon Administrative Rules intend to create a regulatory environment that is compatible with the authorization and use of pop-up fishing gear. Our new proposed rule (OAR 635-005-0476) would allow individuals, businesses or organizations to submit a written request for authorization of pop-up fishing gear.

Pop-up fishing gear—also known as “on-demand” or “ropeless” gear—has been demonstrated as a proven solution to prevent the entanglement of whales and sea turtles in vertical buoy lines. The commercial Dungeness crab fishery uses ropes that extend from the seafloor to surface buoys, creating a persistent entanglement hazard for endangered species. Pop-up systems eliminate this risk by storing the rope and surface floats with the traps/pots on the ocean floor, only releasing the gear to the surface when the fisher is ready to retrieve the gear. Field trials and pilot programs have demonstrated the effectiveness of pop-up gear in reducing entanglement risk. In California, at-sea trials showed that pop-up systems can be reliably deployed and retrieved, even under commercial fishing conditions.³² Indeed, in 2024, the largest trial of pop-up fishing gear on the West Coast proved a success—for fishers and whales. Tested by 19 commercial California Dungeness crab fishermen on over 277 fishing trips, the gear had a 98% pop-up success rate and fishers landed 229,000 pounds of crab worth \$1.6 million.³³ Similarly, in 2025, 12 commercial California Dungeness crab fishermen using pop-up gear

³² Sub Sea Sonics. Large-Scale Testing of Pop-up Fishing Gear Successfully Demonstrates Potential to Re-Open the California Commercial Dungeness Crab Spring Fishery While Protecting Whales from Entanglement (2024).

https://www.subseasonics.com/_files/ugd/edbdaf_9716e39474ae4f57a833972d1deb0bb8.pdf

³³ *Id.*

landed 218,000 pounds of crab valued at \$1.4 million.³⁴ The benefits of pop-up gear extend beyond conservation. By enabling fishing to continue in areas that would otherwise be closed or under restrictions to protect endangered species, pop-up systems offer economic resilience to fishing communities. They also reduce gear loss—because there are no surface buoys to be struck by vessels or removed by poachers—helping to prevent ghost fishing and minimize marine debris, a growing concern in coastal ecosystems.³⁵

Pop-up gear has also been tested successfully in other regions and fisheries. In Australia, rock lobster fishers already use pop-up gear. The Canadian snow crab fishery operating in the Gulf of St. Lawrence fishes snow crab for commercial sale using pop-up gear during times when the fishery would otherwise be closed to protect critically endangered North Atlantic right whales. Similarly, the South Atlantic Fishery Management Council is in the process of authorizing pop-up gear to allow black sea bass fishers to regain access to an area long closed to protect right whales. And, in the North Atlantic, ropeless gear trials have been conducted in the American lobster fishery to protect this species. These trials have shown that acoustic release systems and virtual gear marking technologies can be integrated into existing fishing operations with minimal disruption, while significantly reducing the risk of entanglement.

For this reason, the petitioners recommend that the OFWC create a regulatory pathway to authorize pop-up gear for use in this fishery and remove existing regulatory language that conflicts with the use of pop-up fishing gear.

The proposed amendments to OAR 635-005-0240 add two new definitions and revise two existing definitions. The additions include definitions for the terms “Pop-up gear” and “Conventional gear.” Including these definitions will not result in any negative impact on businesses and provides any person who engages with OAR Chapter 635 Division 5 with information that clarifies the meaning and intent of regulations throughout the Division. Similarly, revisions of the defined terms “Crab pot” and “Pot or trap” will not result in a negative impact on businesses. Updating the definitions for “Crab pot” and “Pot or trap” would permit the use of pop-up fishing gear while ensuring conventional pot or trap users comply with existing enforcement requirements. Overall, OAR 635-005-0240 provides critical definitions for understanding how the state of Oregon regulates commercial shellfish and marine invertebrate fisheries and must remain in place to ensure that regulations are properly understood and interpreted. The existing rule is not complex and, to the best of our knowledge, does not conflict with other local, state or federal rules and regulations.

Additional proposed amendments to OAR 635-005-0275, OAR 635-005-0480, and OAR 635-005-0485 introduce language permitting the use of a pop-up fishing gear and clarifying that pop-up gear is not subject to tagging and marking requirements and groundline restrictions that

³⁴ Sub Sea Sonics and Guardian Ropeless Systems (July 31, 2025). Available: https://www.subseasonics.com/files/ugd/edbdaf_ef400c05f8fc4057946bc35863814e88.pdf

³⁵ *Id.*

apply to conventional gear. The proposed amendments are necessary for the use of pop-up fishing gear and do not impact the substantive goals of the existing rule.

OAR 635-005-0476 is a proposed new rule that specifies the application process for authorizing pop-up fishing gear. The proposed language includes criteria to guide enforcement officers and staff in making determinations about whether an application for authorization should be accepted or denied. The Department must determine that the proposed gear is detectable, retrievable, and identifiable. This process ensures that unauthorized pop-up gear systems that are out of compliance with enforcement regulations cannot be used in the fishery; instead, all pop-up gear systems must be authorized prior to use.

B. Rule Changes Supporting the Further Restriction of Vertical Line Usage During the Commercial Dungeness Crab Late-Season

This section applies to the following regulations:

- OAR 635-005-0405 (“Requirement for Ocean Dungeness Crab Permit”)
- OAR 635-005-0460 (“Harvest Areas – Dungeness Crab Fishery”)

Proposed amendments to OAR 635-005-0405 and OAR 635-005-0460 pertain to the late-season of the commercial Dungeness crab season and seek to further reduce entanglement risk by shifting the start of the late-season regulations from May 1 to April 1, moving the fishing depth restriction from 40 fathoms to 30 fathoms, reducing the amount of conventional fishing gear allowed during the late-season period. Beginning in 2028, the proposed amendments permit only authorized pop-up gear April 1 to August 14.

Peer-reviewed science definitively shows that humpback whales are present in higher concentrations starting in April. Implementing risk reduction measures starting in May is too late. Derville et al. 2023, found that the “seasonality of Dungeness crab fishing and rorqual whale migration coincides with a peak of exposure around the month of April” coinciding with the upwelling season and humpback whale migration.³⁶ Between April 13 and 25 in 2023, a large group of 30 to 50 humpback whales was observed near the Columbia River mouth, inside 40 fathoms.³⁷ From 1989-2021, the majority of rorqual sightings off the coast of Oregon happened between April and November, those sightings being dominated by humpback whales.³⁸ Ocean waters off Oregon are important for other whale species starting in June

³⁶ Derville et al. (2023) at 7.

³⁷ ODFW, Commercial Crab Fishing Fleet Advisory, (2023), https://www.dfw.state.or.us/MRP/shellfish/commercial/crab/docs/whale_entanglement/ODFW_Fleet_Advisory_050223_FINAL.pdf

³⁸ Derville et al., Seasonal, Annual, and Decadal Distribution of Three Rorqual Whale Species, (2022), <https://www.frontiersin.org/journals/marine-science/articles/10.3389/fmars.2022.868566/full#T2>.

including fin and gray whales, per the biologically important areas identified by NOAA.³⁹ Peak occurrence of humpback whales is also predicted to occur between June 20 and October 19.⁴⁰ Given the best available scientific evidence of whale presence and risk of fisheries interactions, the proposed amendments shift the start of the late-season regulations from May 1 to April 1.

The 40-fathom depth restriction is too far offshore and does not align with the best available scientific information on humpback whale habitat or observed humpback whale entanglements. Available data show that roughly half of confirmed humpback whale entanglements off Oregon since 2014, where gear set depth is known, were in gear set at depths less than 40 fathoms.⁴¹ This revision is consistent with the Department's original 30 fathom depth restriction recommendation made in 2020. This change covers much of the inshore depth range of designated humpback whale critical habitat⁴² and scientifically identified biologically important feeding areas,⁴³ and it would exclude conventional crab traps from the area where past entanglements occurred in the 30 to 40 fathom range. As explained above, the implementation of the proposed 30-fathom depth restriction is proposed to start on April 1, to protect humpback whales during the time when risk of fishery interaction is highest (Derville et al. 2023).

Combined with other risk reduction measures, implementing a 40% conventional pot limit reduction would significantly reduce the number of vertical lines in the water causing entanglements. The Department's own analysis indicates that a 30% late season pot limit reduction would confer 1.5 times the conservation benefit of the current 20% pot limit reduction.⁴⁴ A 40% pot limit reduction would likely more than double the conservation benefit to whales. Given that current risk reduction measures did not reduce entanglements, retaining a 20% pot limit reduction is insufficient, particularly when the Department's own analysis indicates higher levels of pot reduction would confer greater conservation benefit. A higher pot limit reduction will benefit humpbacks and gray whales that feed off the Oregon coast in summer months.

³⁹ *Id.*

⁴⁰ Derville et al. (2022) at 9.

⁴¹ ODFW, Draft Conservation Plan for the Oregon ocean commercial Dungeness crab fishery, p. 82, (2021), https://www.dfw.state.or.us/MRP/shellfish/commercial/crab/docs/2021/Public_CP_DRAFT_8.18.21.pdf.

⁴² NOAA Fisheries, Biological Report for the Designation of Critical Habitat [...] of Humpback Whales, (2020), https://media.fisheries.noaa.gov/2021-04/Biological%20Report_HWCH_081420_updated_508.pdf?null=.

⁴³ Calambokidis et al., Biologically Important Areas II for cetaceans within U.S. and adjacent waters, (2024), <https://www.frontiersin.org/journals/marine-science/articles/10.3389/fmars.2024.1283231/full>.

⁴⁴ Braby, Caren (2020), Reducing risk of whale entanglements in the Oregon Dungeness crab fishery, ODFW Marine Resources. https://www.dfw.state.or.us/agency/commission/minutes/20/08_Aug/Reducing%20Risk%20of%20Whale%20Entanglements%20in%20Oregon%20Dungeness%20Crab%20Fishery%208.7.2020.pdf.

While amending the depth restriction and further reducing the pot limit in the late season is expected to reduce entanglement risk in the near-term—an immediate requirement given the consistently high number of entanglements in Oregon commercial Dungeness crab gear—they are unlikely to reduce the number of entanglements to a level that would promote humpback whale recovery, especially when entanglements are considered across multiple West Coast fisheries affecting the species. Therefore, the proposed regulations treat these late-season regulations as a stepping-stone to a fully pop-up, whale-safe late-season fishery starting April 1, 2028. This would ensure that the fishery is operating in a safe way for whales when the risk of interactions is highest. Experimental testing in California has demonstrated pop-up fishing to be highly successful and lucrative. Based on these successes, the California Department of Fish and Wildlife is on the verge of authorizing pop-up gear for commercial use in this fishery in the spring starting in 2026.

For Oregon, 2028 is a reasonable time frame to phase in pop-up fishing gear and aligns with the Department’s plans to initiate an experimental fishing permit program. If pop-up gear is available and authorized for use before 2028, the late season requirements would only apply to conventional gear, meaning that fishery participants with the ability to use pop-up gear could fish 100% of their allocated pot limit at any depth.

C. Rule Changes Supporting Transparent and Timely Fisheries Management Practices

This section applies to the following regulations:

- OAR 635-005-0236 (“Entanglement Transparency and Accountability”) (NEW RULE)
- OAR 635-005-0401 (“Unauthorized Take Emergency Procedures — Dungeness Crab”) (NEW RULE)

OAR 635-005-0236 and OAR 635-005-0401 are two proposed new rules to ensure transparency and accountability regarding entanglements. As proposed in OAR 635-005-0236, the Department would promptly provide public information about entanglements that occur in Oregon or involve Oregon fishing gear. The Department would be required to make best efforts to identify and categorize the entangling material.

OAR 635-005-0401 would require the Department to implement emergency management measures in response to observed periods of elevated entanglement risk. Having emergency procedures to respond quickly and efficiently to entanglements is especially important because the fishery is operating without an Endangered Species Act incidental take permit. Federal law ensures that human activities like commercial fishing do not jeopardize the existence of endangered species or prevent marine mammals from reaching their optimum sustainable population sizes. Without the analysis underpinning the issuance of Endangered Species Act incidental take permits, Oregon’s commercial fisheries may be causing or contributing to the extinction of whales and leatherback sea turtles. Thus, it is critical that management respond

quickly to the best available science and changing oceanographic conditions to prevent all entanglements. The adaptive approach proposed here includes triggers for management actions based on observed entanglements, including partial and complete temporary fishery closures to conventional fishing, if endangered or threatened species are confirmed entangled in Oregon Dungeness crab fishing gear. Entanglement in fishing gear is considered a serious threat to these small populations.

California’s Risk Assessment and Mitigation Program established an impact mitigation score for blue whales, humpbacks, and leatherback sea turtles to determine the severity of active entanglement risk and to act as a monitoring tool and trigger for emergency closures. What we recommend here is a less burdensome administrative process inspired by the California regulations. We recognize both the need for emergency closure procedures and the need for streamlined processes for ODFW fisheries.

D. Comments on Amendments to Existing Rules:

(a) OAR 635-005-0240

i. Options for achieving the existing rule’s substantive goals while reducing the negative impacts on businesses:

This section of the Oregon Administrative Rules provides definitions for various words used throughout Division 005 regulations. Both the existing rule and proposed amendments will not have a negative impact on businesses.

ii. The continued need for the existing rule

The defining of various terms used throughout Division 005 is essential to ensure proper comprehension of the regulatory throughout the Division. Therefore, the existing rules are needed.

iii. The complexity of the existing rule

The existing rule is not very complex and can be easily understood.

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

The existing rule does not conflict with other state or federal rules or with local government regulations. The definitions of the terms included in OAR 635-005-0240 apply to the terms as used in Division 005 regulations.

- v. **The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule.**

Given that OAR 635-005-0240 is a definitions section covering various subject areas, changes to technology, economic conditions, or other factors are unlikely to impact the rule.

(b) OAR 635-005-0275

- i. **Options for achieving the existing rule’s substantive goals while reducing the negative impacts on businesses**

This section of the Oregon Administrative Rules lists a complete set of legal gear types and associated general restrictions to take shellfish and marine invertebrates in the fisheries specified in Division 5. There are no alternative options for achieving the rule’s substantive goals while reducing negative impacts on businesses.

- ii. **The continued need for the existing rule**

This rule must continue to remain in effect to ensure that only legal gear types are used to take shellfish and marine invertebrates in fisheries and that fishery participants are aware of any gear restrictions.

- iii. **The complexity of the existing rule**

The existing rule is not very complex, but does, in some instances, provide specific guidelines for gear used to take shellfish and marine invertebrates such as line making, biodegradable escape hatches, and tending requirements which could be considered complex.

- iv. **The extent to which the existing rule overlaps, duplicates or conflicts with other state or federal rules and with local government regulations.**

The rule notes that “most individual fisheries listed in this Division are restrained additionally by supplemental regulations specific to those fisheries” and advises fishers to “consult the specific section of the fishery they are interested in for additional regulations.” Therefore, throughout Division 5, there are regulations that overlap with the gear list and restrictions established by OAR 635-005-0275.

- v. **The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule.**

This existing rule does not reflect the development and advancement of pop-up fishing gear technology. Our proposed amendments intend to address barriers within the existing rule that prohibit the use of pop-up gear.

(c) OAR 635-005-0405

i. Options for achieving the existing rule’s substantive goals while reducing the negative impacts on businesses

This section of the Oregon Administrative Rules establishes requirements and limits for taking, landing, or possessing Dungeness crab from the ocean Dungeness crab fishery and details privileges afforded to holders of an Ocean Dungeness Crab Permit. There are no alternatives to the existing regulations that would achieve the substantive goals of the existing rule while reducing the negative impact on businesses.

ii. The continued need for the existing rule

The existing rule provides the state and its agencies with a process to properly manage take of Dungeness crab from the state’s ocean waters. This existing rule is needed to prevent unlawful take, landing, or possession of Dungeness crab and to operate a sustainable fishery.

iii. The complexity of the existing rule

The existing rule has some complexities that may not be understood by individuals unfamiliar with the state’s Dungeness crab fishery, but overall, the rule clearly defines the privileges and restrictions associated with obtaining Ocean Dungeness Crab permit.

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

Some of the requirements laid out in the existing rule overlap with ORS 508.931, ORS 508.941, ORS 508.235, ORS 508.260.

v. The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule.

As it relates to the overall intentions of our petition, OAR 635-005-0405 is largely consistent with the current technology and economic conditions of the commercial Dungeness crab fishery. This rule has been amended as recently as August 2023 and September 2020.

(d) OAR 635-005-0460

i. Options for achieving the existing rule’s substantive goals while reducing the negative impacts on businesses

This section of the Oregon Administrative Rules establishes the harvest areas and times for the commercial Dungeness crab fishery. While economic impacts may occur because of harvest areas, times, or closures, there is no alternative option for achieving the existing rule’s substantive goals while reducing impacts on businesses.

ii. The continued need for the existing rule

This rule establishes harvest areas and clearly defines the boundaries of an Oregon Dungeness crab permit. This rule must continue to remain in effect to ensure fishery participants do not unlawfully take, land, or possess Dungeness crab in a manner that jeopardizes the sustainability or the fishery or safety of participants.

iii. The complexity of the existing rule

OAR 635-005-0460 is not a complex rule.

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

This rule establishes the harvest areas for the commercial Dungeness crab fishery. Therefore, numerous regulations related to the taking, possessing, or landing of Dungeness crab in the state are likely to overlap with OAR 665-005-0460.

v. The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule.

Changes to technology, economic conditions, or other factors are unlikely to impact the rule.

(e) OAR 635-005-0480

i. Options for achieving the existing rule's substantive goals while reducing the negative impacts on businesses

OAR 635-005-0480 is a comprehensive set of buoy tag and gear marking requirements for gear used in the commercial Dungeness crab fisheries in the Columbia River and Pacific Ocean. While there are costs associated with uniquely marked rope and buoys, the existing rule includes measures such as catastrophic loss responses and phased-in line marking requirements to help address cost concerns. Overall, there is no alternative to the existing rule that will achieve the same substantive goals while reducing the negative impact on businesses.

ii. The continued need for the existing rule

Gear marking and buoy marking requirements are crucial to being able to identify gear being used in the commercial Dungeness crab fishery. This marking is not only a way to prevent unlawful fishing but also helps to identify lost, abandoned, or derelict fishing gear as well as gear implicated in whale entanglements. Therefore, the rule must continue to exist.

iii. The complexity of the existing rule

The gear marking and buoy marking requirements are complex due to the level of specificity of the rule. Gear marking requirements have an additional level of complexity for fishery participants involved in multiple Oregon fisheries or other west coast fisheries.

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

Line marking requirements for the commercial Dungeness crab fishery are a part of a collaborative effort between Oregon, Washington, and California (Tri-State Dungeness Crab) to ensure that all commercial Dungeness crab gear has a unique color marking to make it easy to identify the state of origin. Additionally, specific fisheries regulated by Division 5 may include gear marking requirements that overlap with those in this rule.

v. The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule.

OAR 635-005-0480 received temporary and permanent amendments over the last several years. Changes to technology, economic conditions, and other factors are likely reflected in the amendments. However, the existing rule does not reflect the prospect of pop-up fishing gear as a legal gear type for the commercial Dungeness crab fishery.

(f) OAR 635-005-0485

i. Options for achieving the existing rule's substantive goals while reducing the negative impacts on businesses

This section of the Oregon Administrative Rules established restrictions on Dungeness crab gear used to take shellfish and marine invertebrates in the commercial Dungeness crab fishery. There are no alternative options for achieving the rule's substantive goals while reducing negative impacts on businesses.

ii. The continued need for the existing rule

This rule must continue to exist to manage the Dungeness crab fishery, including by setting seasons and the type of gear that is lawful.

iii. The complexity of the existing rule

This rule is not complex.

- iv. The extent to which the existing rule overlaps, duplicates or conflicts with other state or federal rules and with local government regulations.**

OAR 635-005-0485 establishes prohibitions on gear used in the commercial Dungeness crab fishery. Therefore, numerous regulations related to the taking, possessing, or landing of Dungeness crab in the state are likely to overlap with OAR 635-005-0485.

- v. The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule.**

The existing rule does not reflect the prospect of pop-up fishing gear as a legal gear type for the commercial Dungeness crab fishery due to its prohibition of traps joined by a common groundline.