

## STAFF SUMMARY FOR APR 17, 2019

**25. WHALE AND TURTLE PROTECTION – DUNGENESS CRAB FISHERY****Today's Item****Information** ☐**Action** ☒

Receive update on legal settlement agreement to protect whales and sea turtles from entanglement in commercial Dungeness crab gear, and consider potential application to the recreational Dungeness crab fishery.

**Summary of Previous/Future Actions (N/A)****Background**

FGC has authority to regulate the recreational Dungeness crab fishery; however, authority over the commercial Dungeness crab fishery is held by DFW and the California State Legislature. The commercial Dungeness crab fishery operates by using round baited traps covered with netting, which are then set in deeper water and tied to floating buoys. In recent years, whale populations in California's waters have increased, leading to greater presence in Dungeness crab fishing grounds and an increased risk of entanglement in deployed fishing gear.

In 2015, DFW, in partnership with the National Marine Fisheries Service (NMFS) and California Ocean Protection Council (OPC), convened the Dungeness Crab Fishing Gear Working Group to "tackle the challenge of reducing the risk of whale entanglements in the California Dungeness crab fishery". In 2017, following a drastic increase in the number of whale entanglements off the West Coast, the Center for Biological Diversity sued DFW, challenging DFW authorization of the crab fishery as a violation of Section 9 of the federal Endangered Species Act for take of blue and humpback whales and leatherback sea turtles.

On Mar 26, 2019, DFW, together with the Center for Biological Diversity and the Pacific Coast Federation of Fishermen's Associations (as intervenor-defendant), announced they had reached a settlement and filed stipulation to stay the case (Exhibit 1); the settlement includes a series of interim measures to protect listed whales and turtles in the commercial Dungeness crab fishery, using the best available science, until DFW receives an incidental take permit from the federal government. The settlement (Exhibit 2) includes an "Exhibit A – Terms of Agreement" that defines specific measures to be taken.

In a Mar 29, 2019 statement (Exhibit 3), the Dungeness Crab Fishing Gear Working Group provided background, context, and risk assessment strategies for both commercial and recreational crab fisheries, which built on an advisory released by the group's Evaluation Team; the team had just convened on Mar 19 to proactively discuss and assess relative risk of entanglements following reports of increased humpback whale concentrations (Exhibit 4). Specifically, the Dungeness Crab Fishing Gear Working Group encouraged recreational Dungeness crab fishermen, as well as other fisheries using fixed gear, to review the risk assessment and consider fishing as minimal gear as possible to reduce vertical lines, and to avoid fishing in higher risk areas during spring and summer months (Exhibit 3).

This meeting provides FGC an opportunity to discuss the potential implications of the terms of the agreement for the recreational Dungeness crab fishery.

## STAFF SUMMARY FOR APR 17, 2019

**Significant Public Comments (N/A)****Recommendation**

**FGC staff:** Discuss the potential implications of the terms of the agreement for the recreational Dungeness crab fishery; if FGC wishes to discuss further, consider referring to MRC for review and recommendation.

**Exhibits**

1. [DFW News: \*Entanglement Settlement Protects Whales, Sea Turtles and California's Crab Fishery\*, dated Mar 26, 2019](#)
2. [Center for Biological Diversity v. Bonham \(Defendant\), and Pacific Coast Federation of Fishermen's Associations and Institute for Fisheries Resources \(Intervenor-Defendants\), stipulation and \[proposed\] order staying case, filed Mar 26, 2019](#)
3. [Dungeness Crab Fishing Gear Working Group statement, dated Mar 29, 2019](#)
4. [California Dungeness Crab Fishing Gear Working Group Evaluation Team advisory, dated Mar 19, 2019](#)

**Motion/Direction (N/A)**

## CDFW News



CONSERVATION EDUCATION, CRAB, ENDANGERED SPECIES, ENVIRONMENTAL SCIENCE, FISHERIES, FISHING (COMMERCIAL), HABITAT CONSERVATION, MARINE, WILDLIFE PROTECTION

## Entanglement Settlement Protects Whales, Sea Turtles and California's Crab Fishery

MARCH 26, 2019 | KMACINTY

SAN FRANCISCO — Californians will be pleased to know that Dungeness crab will be caught off the coast with greater care for endangered wildlife under a settlement announced by the Center for Biological Diversity, the California Department of Fish and Wildlife (CDFW) and the Pacific Coast Federation of Fishermen's Associations (PCFFA).

The legal settlement protects whales and sea turtles from entanglement in commercial Dungeness crab gear. The Center for Biological Diversity sued CDFW in October 2017 after a drastic increase in the number of whale entanglements off the West Coast.

"As I've said many times, no one wants whale entanglements to happen," said CDFW Director Charlton H. Bonham. "This agreement represents hours of intense negotiation to help ensure they don't happen while supporting the resiliency of the crab fishery in the long run. I am thankful for the leadership of the Center for Biological Diversity and the Pacific Coast Federation of Fishermen's Associations who realized something needed to be done together."

"This is great news for whales and sea turtles fighting extinction off California's coast," said Kristen Monsell, a Center for Biological Diversity attorney. "The settlement will reduce serious threats from crab gear to these beautiful and highly endangered animals. This agreement is a turning point that gets us closer to zero entanglements and a healthy ocean."

The lawsuit was brought by the Center for Biological Diversity against CDFW (*Center for Biological Diversity v. Bonham*) in federal court in San Francisco. The Pacific Coast Federation of Fishermen's Associations, which represents crabbers, intervened in the lawsuit.

The settlement, subject to court approval, creates a comprehensive approach to the problem of whale entanglements. It expedites state regulation, ensures stakeholder input from the Dungeness crab Fishing Gear Working Group and formalizes a first-ever commitment by CDFW to pursue a federal permit for protecting endangered species. While these steps are executed, the settlement calls for this year's crab season to end three months early and prescribes protective measures for future springtime fishing seasons, when the greatest number of whales are present off the California coast.

In November 2018, CDFW announced

(<https://www.sfchronicle.com/opinion/openforum/article/California-seeks-plan-to-protect-whales-and-13426429.php>) it would seek a federal permit under the Endangered Species Act to address protected species interactions with the crab fishery. Obtaining a permit and developing a conservation plan as part of that process can take years, so the settlement spells out interim protections.

"This settlement represents the path back to normality for California's crab fishery with built-in protections for whales and crab fishing operations under the Endangered Species Act," said Noah Oppenheim, executive director of PCFFA. "The past several years have been extraordinarily challenging for fishing families, and the actions we're taking here are no exception. But in the end, we're going to emerge together with a resilient, prosperous, and protective fishery that will continue to feed California and the nation."

Details of the settlement can be found at <http://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=166146> (<http://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=166146>).

*The mission of the California Department of Fish and Wildlife is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public.*

*The Center for Biological Diversity is a national, nonprofit conservation organization with more than 1.4 million members and online activists dedicated to the protection of endangered species and wild places.*

*The Pacific Coast Federation of Fishermen's Associations is the largest commercial fishermen's organization on the West Coast, representing 17 local and regional associations from Santa Barbara to Southeast Alaska. As a major commercial fishing industry trade association, PCFFA represents the interests of commercial fishing families who make their living harvesting and delivering high-quality seafood to America's tables.*

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*Media Contacts:**Jordan Traverso (mailto:Jordan.Traverso@wildlife.ca.gov), CDFW, (916) 654-9937**Kristen Monsell (mailto:KMonsell@biologicaldiversity.org), Center for Biological Diversity, (510) 844-7137**Noah Oppenheim (mailto:Noah@ifrfish.org), PCFFA, (415) 723-1801 or Michael Coats (mailto:Michael@coatspr.com), (707) 235-6203*

◀ **CRAB** ◀ **DUNGENESS** ◀ **ENDANGERED SPECIES ACT** ◀ **ENTANGLEMENT** ◀ **SEA**  
**TURTLES** ◀ **WHALES**

XAVIER BECERRA  
Attorney General of California  
MYUNG J. PARK  
Supervising Deputy Attorney General  
GARY ALEXANDER, SBN 167671  
CONNIE SUNG, SBN 304242  
SARA D. VAN LOH, SBN 264704  
Deputy Attorneys General  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
Telephone: (415) 510-3743  
Fax: (415) 703-5843  
E-mail: Sara.VanLoh@doj.ca.gov  
*Attorneys for Defendant Charlton H. Bonham*

GLEN H. SPAIN (CSB #88097)  
PO Box 11170  
Eugene, OR 97440-3370  
(541)521-8655  
Fax: (541) 689-2500 *[By arrangement]*  
Email: fishlifr@aol.com  
*General Counsel and Attorney for Intervenor-Defendants  
Pacific Coast Federation of Fishermen's  
Associations (PCFFA) and Institute for Fisheries  
Resources (IFR)*

KRISTEN MONSELL (SBN 304793)  
Email:  
kmonsell@biologicaldiversity.org  
CATHERINE KILDUFF (SBN 256331)  
Email: ckilduff@biologicaldiversity.org  
Center for Biological Diversity  
1212 Broadway, Suite 800  
Oakland, CA 94612  
Phone: (510) 844-7137  
Facsimile: (510) 844-7150

DEAN S. KRISTY (SBN 157646)  
Email: dkristy@fenwick.com  
FENWICK & WEST LLP  
555 California Street, 12th Floor  
San Francisco, CA 94104  
Telephone: (415) 875-2300  
Facsimile: (415) 281-1350  
*Attorneys for Plaintiff  
Center for Biological Diversity*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**CENTER FOR BIOLOGICAL DIVERSITY,**  
  
Plaintiff,  
  
**v.**  
  
**CHARLTON H. BONHAM, in his official  
capacity as Director of the California  
Department of Fish and Wildlife,**  
  
Defendant,  
  
and  
  
**PACIFIC COAST FEDERATION OF  
FISHERMEN'S ASSOCIATIONS and INSTITUTE  
FOR FISHERIES RESOURCES,**  
  
Intervenor-Defendants.

Case No. 3:17-cv-05685-MMC

**STIPULATION AND [PROPOSED]  
ORDER STAYING CASE**

Judge: Hon. Maxine Chesney  
Trial Date: None scheduled  
Action Filed: October 3, 2017



Pursuant to Northern District Local Rule 6-2, Plaintiff Center for Biological Diversity, Defendant Charlton H. Bonham, in his official capacity as Director for the California Department of Fish and Wildlife, and Intervenor-Defendants Pacific Coast Federation of Fisherman's Associations and the Institute for Fisheries Resources (collectively, the "Parties") submit this stipulation and proposed order staying the case.

### RECITALS

1. Plaintiff filed a complaint on October 3, 2017, alleging that Defendant has caused and is causing the "illegal 'take' of threatened and endangered humpback whales, endangered blue whales, and endangered Pacific leatherback sea turtles." (Dkt. No. 1.) Plaintiff's complaint challenges Defendant's "authorization, permitting, licensing, overseeing, and management of the California commercial Dungeness crab fishery," which Plaintiff alleges "is killing, injuring, harming, capturing, and otherwise causing 'take' of humpback whales, blue whales, and leatherback sea turtles in violation of" Section 9 of the Endangered Species Act. *Id.*; 16 U.S.C. § 1538.

2. Defendant filed an answer to Plaintiff's complaint on November 17, 2017, admitting and denying certain of Plaintiff's allegations. (Dkt. No. 15.)

3. After successfully intervening, Intervenor-Defendants filed an answer to Plaintiff's complaint on April 16, 2018, incorporating Defendant's responses in its answer, and admitting and denying certain of Plaintiff's allegations. (Dkt. No. 41.)

4. The Parties filed cross-motions for summary judgment in this case and appeared for oral argument on the motions on February 22, 2019. After the matter was deemed submitted, Defendant requested that the Court hold off on a ruling pending further settlement discussions. The Court agreed and ordered a joint status report to be filed by the Parties by March 15, 2019. (Dkt. No. 66.) On March 15, 2019, the Parties requested an additional week for continuing negotiations, which the Court granted. (Dkt. Nos. 67, 68.)

5. The Parties are happy to report that they have reached an agreement on a series of interim measures that will be protective of the threatened and endangered species at issue in this

lawsuit, which will be effective until Defendant receives an incidental take permit from the federal government. A true and correct copy of these agreed-upon terms is attached as Exhibit A.

6. Because these interim measures are incomplete in some respects, requiring further scientific analysis, development of the process by which threat levels will be evaluated and responded to, and implementation of rulemaking to provide the necessary regulatory framework for the program, the Parties have agreed that the appropriate procedural mechanism for resolving this litigation while protecting the Parties' respective interests is to stay the case.

7. A case stay would allow any party to reopen the case if another party acts in contravention of the attached terms, thus providing sufficient reassurance to the Parties that a continuing avenue for more immediate relief exists.

#### STIPULATION

THEREFORE, IT IS HEREBY STIPULATED among the Parties, through their respective counsel and subject to this court's approval, as follows:

1. All further proceedings in this matter, including the submitted cross-motions for summary judgment, should be stayed until the issuance of the final rulemaking described in Exhibit A as the RAMP rule. The case should be administratively closed during that time, subject to reopening on motion by any party. Within 14 days after the publication of the final rulemaking, the Parties will file a status report with the Court.

2. The Parties are willing to provide additional status reports to the Court every six months, or at whatever frequency would satisfy the Court that matters are proceeding.

IT IS SO STIPULATED.

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1 Dated: March 26, 2019

Respectfully submitted,

2 /s/ Sara D. Van Loh

Sara D. Van Loh

3 Deputy Attorney General

4 OFFICE OF THE ATTORNEY GENERAL

5 *Attorneys for Defendant Charlton H. Bonham*

6 /s/ Kristen Monsell

Catherine Kilduff

7 Kristen Monsell

8 *Attorneys for Plaintiff*

*Center for Biological Diversity*

9 /s/ Glen Spain

10 Glen Spain

11 *Attorney for Intervenor Pacific Coast*

*Federation of Fishermen's Association and*

12 *Institute for Fisheries Resources*

13 **ATTESTATION**

14  
15 I, Sara D. Van Loh, am the ECF user whose identification and password are being used to  
16 file this STIPULATION AND [PROPOSED] ORDER STAYING CASE. In compliance with  
17 L.R. 5-1(i), I attest that the other signatories have concurred in this filing.

18 DATED: March 26, 2019

/s/ Sara D. Van Loh

19  
20 **[PROPOSED] ORDER**

21  
22 PURSUANT TO STIPULATION OF THE PARTIES, IT IS HEREBY ORDERED that:

23 1. All further proceedings in this matter, including the submitted cross-motions for  
24 summary judgment, are stayed until the issuance of the final rulemaking described in Exhibit A as  
25 the RAMP rule.

26 2. The court clerk is instructed to administratively close the case, subject to reopening  
27 on motion by any party.

28 3. Within 14 days after publication of the final rulemaking, the Parties will file a status

1 report with the Court.

2 4. The Parties will further submit a brief joint status update every six months from the  
3 date of this order until issuance of the RAMP rule.

4  
5 DATED: \_\_\_\_\_

6 HON. MAXINE M. CHESNEY  
7 United States District Judge  
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**Exhibit A**

Center for Biological Diversity v. Bonham

Case No. 3:17-cv-05685-MMC

U.S. District Court for the Northern District of California

## **Exhibit A - Terms of Agreement**

In the context of agreeing to support a stay of the case in advance of a ruling on the motion for summary judgment, the parties agree to the following measures:

**I. The parties agree to the following:**

- a. The 2019 season will close statewide on April 15.
- b. For the 2020 season and until submission of the draft HCP, the final state RAMP rule, or November 1, 2020, whichever is later, the season will close April 1 consistent with the approach described below.
- c. Until the ITP issues, the following additional commitments will apply:
  - i. In consultation with the Working Group, the Director determines risk and management action on these dates: November 1, December 15, January 15, February 15, March 15, April 1, April 15, May 1, May 15, June 1, June 15, July 1.
  - ii. Prior to those dates, the Working Group will provide any RAMP risk assessment and management recommendation to the Director and settlement parties.
  - iii. The following also apply:
    1. One or more confirmed entangled ESA listed species in CA Dungeness gear or two or more ESA-listed species confirmed in unknown gear prompts a district-wide closure, or other management action that the Director demonstrates protects listed species based on best available science after consultation with the Working Group and settlement parties.
    2. Presence of 20 or more ESA-listed whales in a NOAA survey or a running average of 5 or more ESA-listed whales over a one-week period prompts a district-wide closure, or other management action that the Director demonstrates protects listed species based on best available science after consultation with the Working Group and settlement parties.
    3. The April, 2020 season will close April 1 for Districts 10, 17, and south. That closure can be lifted by the Director after consultation with the Working Group and the settlement



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parties, only if the risk is low as defined in the March 15, 2020 Working Group RAMP risk assessment and management recommendation and remains low for each successive reporting date during the 2020 season.

4. Beginning April 1, 2021, and each season on April 1 thereafter until the ITP issues, Districts 10, 17, and south are only open to ropeless fishing gear by default. This spring closure can be lifted at the next scheduled Director's risk determination, after consultation with the Working Group, only if the risk is low on all RAMP criteria.

**II. The parties agree the provisions contained in Appendix A will be submitted to the Working Group, and the Department will advocate that the Working Group consider them for incorporation into the RAMP rule unless the Working Group demonstrates a different approach protects listed species based on the best available science.**

**III. The parties further agree:**

a. The Department will:

- i. Submit a comprehensive draft HCP to NOAA consistent with Section 10 of the ESA, 16 USC § 1539, for commercial Dungeness crab by May 15, 2020.

1. Involve the Center for Biological Diversity and PCFFA in the development process through quarterly consultations/check-ins.

- ii. Prohibit crab gear spatially and temporally or take other measures as recommended by NOAA until ITP is issued.

- iii. Complete the following rulemakings:

1. Gear retrieval, to be effective by November 15, 2019.
2. RAMP rulemaking – this shall incorporate the elements discussed below – to be effective by November 1, 2020.
3. Marking for fixed gear fisheries, to be effective by November 15, 2019.

- iv. Pursue funding for an appropriate stipend for representatives to the Working Group.

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- v. Support the Working Group efforts to increase public access to meetings and Working Group members' participation via remote access.
  - vi. Commit to a regular frequency of RAMP workshops (i.e. webinar or public presentations) to provide accountability and public engagement regarding model design, model iteration, and other steps to increase trust and transparency in the RAMP and Working Group processes.
  - vii. Submit the criteria in Appendix A to the Working Group and advocate that the Working Group consider them for incorporation into RAMP rule unless Working Group demonstrates a different approach protects listed species based on the best available science.
- b. Sea Turtle Evaluation Process - The Department will:
- i. Request and advocate for six months' funding (about \$130,000) from OPC during 2020 or before for NOAA to adapt the EcoCast model to the Dungeness crab fishery and incorporate recent years' data into the model, and
  - ii. Pursue funding in collaboration with NOAA scientists for Endangered Species Act Section 6 funding, 16 USC § 1535, to monitor sea turtle presence off central and northern California.
- c. Whale presence modelling – the Department will continue to support development of humpback and blue whale distribution models that consider forage information, including automation of the model to apply to the ocean conditions risk factor.
- i. The Forney/Santora model, with results of hindcasting testing will be presented to the Working Group in March/April 2019.
  - ii. The WhaleWatch model that predicts habitat suitability for blue whales will be refined to enable real-time predictions at the scale of 10 km.
  - iii. The Department will work with OPC to finalize contracting for development of automated humpback and blue whale distribution models before November 1, 2020.
  - iv. If NOAA completes internal review of the models outlined in (a) – (c) above and indicates they are ready for use in fisheries management, they can be used to inform the ocean conditions risk factor.



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d. Monitoring/Solar Loggers –

- i. PCFFA commits to supporting this process by recruiting volunteers to fill the 40 available OPC funding spots for the 2019-2020 season. PCFFA will work to ensure volunteers provide a range of fishermen representing different tiers, levels of fishing effort, and fishing location.
- ii. If the 40 available OPC funding spots are not filled by volunteers during the 2019-2020 season, the parties agree to reconvene in June 2020 to discuss appropriate steps to further development of electronic monitoring.
- iii. As other applicable monitoring practices are developed (for example, self-reporting or aerial surveys), information can be incorporated as appropriate.

e. Ropeless Gear – the Department will continue to support development of ropeless gear technology, or any other alternative gear, and explicitly allow for its testing and use in the RAMP regulation.

- i. Authorized use of ropeless gear will include annual reporting requirements on the outcomes of use, and recommendations for further development.
- ii. The Department will amend existing regulations or finalize new regulations by November 1, 2020, that allow alternate gear, including ropeless gear, that meets the enforcement criteria to be used in any area closed to commercial Dungeness crab fishing to protect whales or sea turtles.

f. The parties will support this settlement publicly and coordinate any joint or separate press releases announcing the settlement to ensure they are consistent and appropriate in characterizations of this settlement and each party's intent.

g. The parties will file a stipulation and proposed order to stay the case pending issuance of the final RAMP rule.

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## **Appendix A**

The following provisions will be submitted to the Working Group, and the Department will advocate that the Working Group consider them for incorporation into the RAMP rule unless the Working Group demonstrates a different approach protects listed species based on the best available science.

The following risk factors will be used to evaluate entanglement risk, and the need for a responsive management action.

1. Predictive or projection factors, which in combination with a second factor would trigger action
  - a. Fleet Dynamics, meaning behavior or potential behavior of the fleet due to changes in the fishery. Until satisfactory data is otherwise available (for example solar loggers or other electronic monitoring of the fleet), **Trigger for elevated risk shall be** (1) the first two weeks of any season opener; (2) any season that opens after Feb. 1.
  - b. Ocean Conditions, meaning prediction or other indication of ocean or forage conditions for whales, including but not limited to low krill abundance and high nearshore anchovy abundance. Until models currently under development are finalized in consultation with the Center for Biological Diversity, **Trigger for elevated risk is poor forage**. To assess forage conditions, the Director will consider stock assessments for various forage species (particularly anchovy and sardine), research cruises (e.g. the NOAA Rockfish Recruitment and Ecosystem Assessment midwater trawl surveys, acoustic trawl surveys for Coastal Pelagic Species), and oceanographic indicators (e.g. ENSO conditions and trends). The Director will also consider the prior analyses Dr. Jarrod Santora, Associate Researcher in the Department of Applied Mathematics, University of California at Santa Cruz, has completed (for calendar years 2013 – 2016) and compare current observations to those from prior years to make informed predictions about forage conditions. Data streams described above will be evaluated in light of the following correlations:
    - i. Forage is considered poor and triggers elevated risk when at least two of the following are true:
      - A. Upwelling is or is predicted to be below average. Specifically, upwelling is assumed to be below average when, according to data developed by NOAA offices which monitor El Niño events such as NOAA's Climate Prediction Center and the West Coast Office of NOAA's Coast Watch program, an El Niño is forecasted or occurring or sea surface temperatures are above average off California in the month prior to the evaluation.
      - B. There is a low krill and high anchovy abundance according to NOAA stock assessments and surveys. In the absence of recent available data, this is considered true.



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- c. Regardless of abundance, whales are concentrated near shore based on NOAA aerial or shipboard observations. In the absence of recent available data, this is considered true.

2. Factors reflecting current, real-time conditions that would individually trigger action

- a. Presence of species of concern. **Trigger for elevated risk** shall be 20 or more whales detected on any one NOAA survey in California waters, or a running average of 5 or more whales over a one-week period.
  - i. Once elevated risk is triggered, elevated risk shall last as follows:
    1. If based on fall aerial survey data, risk shall be elevated through December 15;
    2. If based on spring rock-fish data, risk shall be elevated through the remainder of the season.
  - ii. NOAA survey shall mean the fall whale aerial survey and the spring rockfish survey. Other data streams, such as whale watch data, may also be considered in addition to the NOAA surveys.
  - iii. If NOAA surveys for the current year are not available, historical data detailing whale presence shall be used.
  - iv. Seasonal whale distribution information since 2012 will be used as an indicator for humpback whales' seasonal migration and anticipated arrival to California feeding grounds. The 7-day composite running average of NOAA survey whale sightings in the southern Monterey Bay will be used as indicator of whale concentrations. Reports from breeding grounds in Mexico and Central America will be used as an indicator of whale migration to predict when whales are expected to start arriving in greater numbers offshore California.
- b. Number of confirmed ESA-listed entanglements. **Trigger for elevated risk** shall be 1 or more entanglements of ESA-listed species in the current fishing season, calculated as follows
  - i. A confirmed entanglement attributable to the CA commercial Dungeness crab fishery shall count as 1 entanglement.
  - ii. A confirmed entanglement of a whale in an unknown gear type or a whale of unknown species shall count as 0.5 entanglement.
    1. The Department shall determine an entanglement is confirmed based on the following factors, consistent with NOAA classification:
      - Confirmed photo or video of the gear on the whale
      - Department or NOAA staff has direct visual observation
      - Report came from a trusted source (trained or professional observer)

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- An experienced response entanglement network member or a NMFS expert interviewed the reporting party. The information provided is detailed and specific enough to confirm entanglement
      - Corroborated, independent, and multiple sources providing reports with detailed descriptions of the animal and the entanglement.
    - iii. A reported or unconfirmed entanglement will be investigated by the Department within 48 hours to determine if the criteria that would classify that entanglement as confirmed apply.
- 3. Leatherback Sea Turtles – Trigger for elevated risk shall be NOAA tagging data that indicates a leatherback sea turtle is present in a fishing district or one or more-ESA listed turtles are confirmed entangled in CA commercial Dungeness crab gear or two or more confirmed in unknown crab gear.
- 4. The RAMP rule should include that in response to an elevated risk, the Director shall take appropriate management action. The Director shall also use this approach during an interim period until an ITP is issued.
  - a. Management action will be commensurate with the risk of entanglement.
  - b. Management action will be based on the best available science.
  - c. Management actions will be forward-looking and spatially explicit, but still allow for response to real-time data.
  - d. Management action will be consistent with Fish & Game Code 8276.1(c)(3).
- 5. A rubric adopted in the RAMP rule should outline a scoring system for each risk factor, and associated categories of management actions depending on overall risk score.
  - a. The rubric will allow for Working Group input on practical implementation of the management action.
  - b. Categories of management actions will include at least one the below:
    - i. Modification of fishing seasons and allowable fishing areas;
    - ii. Specifying total or per-vessel numbers of traps allowed in any given fishing area;
    - iii. Requiring use of specialized gear designed to reduce risk of entanglement in specified areas or periods, for example no fishing unless with ropeless gear, or;
    - iv. No action.
  - c. Additional data collection and reporting may also be requirements, including but not limited to the use of solar loggers or other monitoring requirements.

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Once risk factors no longer indicate to the Director an elevated entanglement risk, or if the Director determines that the management actions are not appropriate or protective of marine life, the Director, with consultation with the Working Group, shall remove any management restriction.



### CERTIFICATE OF SERVICE

Case Name: *Center for Biological Diversity v.  
Charlton H. Bonham* Case No. **3:17-cv-05685-MMC**

I hereby certify that on March 26, 2019, I electronically filed the following document with the Clerk of the Court by using the CM/ECF system:

### STIPULATION AND [PROPOSED] ORDER STAYING CASE

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 26, 2019, at San Francisco, California.

FE M. DOMINGO

Declarant

/s/ Fe M. Domingo

Signature

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# CALIFORNIA DUNGENESS CRAB FISHING GEAR WORKING GROUP

March 29, 2019

The California Dungeness Crab Fishing Gear Working Group (Working Group) is a diverse, multi-stakeholder collaboration united by a shared goal to support thriving whale populations along the West Coast and a thriving and profitable Dungeness crab fishery. Established in September 2015, the Working Group is a unique coalition of commercial and recreational fishermen, environmental organization representatives, members of the whale entanglement response network, and state and federal agencies committed to identifying solutions that reduce the risk of whale entanglements in Dungeness crab fishing gear.

On March 26, the California Department of Fish and Wildlife, together with the Center of Biological Diversity and the Pacific Coast Federation of Fishermen's Associations, [announced a settlement](#) to protect whales and sea turtles from entanglement in commercial Dungeness crab gear. The Working Group was not a party in this litigation or the settlement terms. Moving forward, the Working Group understands they will have a role in advising the state in the evaluation of entanglement risk using the [Risk Assessment and Mitigation Program \(RAMP\)](#), which is a core foundational component of the settlement agreement.

On March 19, 2019, the California Department of Fish and Wildlife, in partnership with the National Marine Fisheries Service and the Ocean Protection Council, convened the Working Group's Evaluation Team to proactively discuss and assess the relative risk of entanglements following reports of increased humpback whale concentrations (a risk evaluation summary is [available here](#)). In light of changing events based on the settlement agreement, the Working Group will pause on recommending any additional management action for the commercial fishery during the 2018-19 season.

[The Working Group encourages recreational Dungeness crab fishermen and commercial and recreational fishermen engaged in other fixed gear fisheries to review the \[March 19 risk assessment\]\(#\) and consider fishing as minimal gear as possible to reduce vertical lines in the water. It is also strongly advised to avoid fishing in areas where there are groups of feeding or migrating whales, schools of anchovy, and/or swarms of krill during the spring and summer months.](#)

The Working Group remains committed to continuing to address this pressing and complex issue through further developing the RAMP and working collaboratively with the state and its federal partners throughout the Incidental Take Permit/Habitat Conservation Plan development process. The Working Group will continue to track the RAMP and conduct future risk evaluations to inform recommendations to the Director in advance of and during the 2019-20 California Dungeness crab fishing season.

A request for nominations for new Working Group participants is expected to be available in April. Fishermen and whale watch operators are encouraged to participate in a pilot project testing solar loggers as a tool to help gather enhanced fishing dynamics and whale concentration information. Fishermen are also welcome to participate in gear innovation testing that is underway. To learn more about these opportunities, or to be added to the Working Group's public email list, please contact [info@cawhalegroup.com](mailto:info@cawhalegroup.com).

Information about the Working Group's efforts, including opportunities to provide feedback and contribute expertise to the issue of whale entanglements: [www.opc.ca.gov/whale-entanglement-working-group](http://www.opc.ca.gov/whale-entanglement-working-group) & [www.opc.ca.gov/risk-assessment-and-mitigation-program-ramp](http://www.opc.ca.gov/risk-assessment-and-mitigation-program-ramp).

# CALIFORNIA DUNGENESS CRAB FISHING GEAR WORKING GROUP

March 19, 2019 Convenings

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## Evaluation Team Advisory

### 2018-19 Whale Entanglement Risk Assessment & Mitigation Program (RAMP)

On March 19, 2019, the California Department of Fish and Wildlife, in partnership with the National Marine Fisheries Service and the Ocean Protection Council, convened the California Dungeness Crab Fishing Gear Working Group (Working Group)'s Evaluation Team to proactively discuss and assess the relative risk of entanglements following reports of increased humpback whale concentrations. The Working Group identified the following risk levels for humpback whales:

Humpback Whales		
Risk Factors	Current Entanglement Risk Assessment (March 19, 2019)	Entanglement Risk Assessment Outlook (April/May 2019)
Entanglements	LOW	MODERATE TO HIGH
Forage/ocean conditions	MODERATE	MODERATE TO HIGH
Whale concentrations	LOW	LOW TO HIGH*
Fishing dynamics	LOW TO MODERATE	LOW TO HIGH*

\*Outlook considers regional variability and considers spatial differences of where whales may be congregated.

More information and rationale for the scoring of each factor is [available here](#) (also see "Summary" section below for additional details). The Working Group anticipates changes in the distribution and concentrations of whales in the coming weeks and all risk factors will continue to be monitored closely and responded to as needed.

**The Working Group encourages recreational Dungeness crab fishermen and other commercial and recreational fishermen engaged in fixed gear fisheries to fish as minimal gear as possible and remove any gear that cannot be serviced within required timeframes. When possible, fishermen should consider reducing the number of traps that are being actively fished to reduce vertical lines in the water and avoid fishing in areas where there are groups of feeding or migrating whales, schools of anchovy, and/or swarms of krill.**

This update will be shared via the [DCTF email list](#), the [Working Group webpage](#), and [CDFW's crab webpage](#). The Working Group welcomes your feedback and insights about the Working Group's efforts and the 2018-19 RAMP. Please visit <http://www.opc.ca.gov/whale-entanglement-working-group> or contact the Working Group at [info@cawhalegroup.com](mailto:info@cawhalegroup.com).

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## Summary

The Evaluation Team was convened in response to a report of increased whale activity by members of the whale watch community received on March 15, 2019. Due to optimal weather conditions, on March 15 and 16, 2019 two aerial surveys were coordinated from Pt Lobos north to Gualala ([here](#)) where information on whales,

forage/prey, and Dungeness crab trap distribution was collected. Additional information related to whale concentrations ([here](#)), ocean conditions ([here](#)), fishing dynamics (via fishermen's on-the-water observations), and entanglements ([here](#)) was also gathered in advance of the March 19 Evaluation Team call.

**The Evaluation Team determined that humpback whales are beginning to arrive in Dungeness crab fishing grounds. Although humpback and blue whales have not yet arrived in their traditional feeding grounds in moderate or high numbers, humpbacks are expected to arrive in greater numbers the next 2-3 week and blues in April/May.** Grey whales are continuing to migrate north and appear to be at minimal risk for entanglement, primarily due to the speed they are traveling (i.e., not remaining in one place for an extended period of time). 1,767 crab traps were observed during the aerial survey in concentrations of up to 12 traps per transect, with fishermen reporting that gear is continually being brought to the dock. The March 14 El Niño Southern Oscillation (ENSO) report indicates a mild El Niño this spring (~80%) and summer (~60%) which has implications for forage and whale distributions. Additionally, based on the aerial survey, fishermen's observations, and previous forage reports, it is anticipated that this spring we will see strong abundance of both krill and anchovies.