

STAFF SUMMARY FOR FEBRUARY 21, 2020

18. RECREATIONAL DUNGENESS CRAB AND MARINE LIFE PROTECTIONS**Today's Item**Information ☐Action ☒

Receive DFW update on stakeholder outreach and provide direction on the DFW draft options for regulation changes intended to provide additional whale and turtle protections in the recreational Dungeness crab fishery.

Summary of Previous/Future Actions

- | | |
|--|---------------------------------|
| • FGC discussed entanglement settlement and referred to MRC | Apr 17, 2019; Santa Monica |
| • MRC discussed possible management measures for recreational fishery | Jul 11, 2019; MRC, San Clemente |
| • FGC supported considering recreational measures per MRC recommendation | Aug 7-8, 2019; Sacramento |
| • MRC discussed proposed recreational management measures | Nov 5, 2019; MRC, Sacramento |
| • FGC discussed proposed management measures referred by MRC | Dec 11-12, 2019; Sacramento |
| • Today's discussion and direction for possible rulemaking | Feb 21, 2020; Sacramento |

Background

FGC has authority to regulate the recreational Dungeness crab fishery; authority over the commercial Dungeness crab fishery is held by both DFW and the California State Legislature.

In recent years, whale populations in California's waters have increased, leading to a greater risk of entanglement in deployed crab fishing gear and a drastic increase in the number of whale entanglements off the West Coast. DFW was sued, alleging potential violation of Section 9 of the federal Endangered Species Act for take of blue and humpback whales and leatherback sea turtles without a federal incidental take permit. A Mar 2019 settlement and a stipulation to stay the case, under condition of specific management actions in the commercial fishery, led FGC to initiate a discussion in Apr 2019 with FGC; the discussion focused on potential management implications for the recreational Dungeness crab fishery to reduce the risk of whale and sea turtle entanglement in recreational trap gear. FGC referred the topic to MRC (see Exhibit 1 for additional background).

Following MRC vetting of possible "common-sense" management measures for the recreational Dungeness crab fishery and FGC support for developing such measures, in Dec 2019 MRC recommended advancing a rulemaking to implement several measures proposed by DFW (establishing a trap limit, establishing a stamp validation program, enhanced gear marking, requiring a service interval, and providing in-season authority to DFW's director). FGC asked that DFW conduct additional outreach to help inform and define specific options within those management categories prior to requesting to go notice on a rulemaking.

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Based on FGC direction, DFW held three in-person workshops (Jan 6 in Sacramento, Jan 11 in Sausalito, and Jan 23 in Eureka) intended to solicit additional stakeholder input and inform a final proposal.

Today, DFW will report on the outcomes of the workshops and ongoing stakeholder discussions, and highlight resulting refinements DFW has made to the proposed management measures. DFW will also propose next steps for the process, including a revised timeline to allow for additional MRC vetting and a recommendation at MRC's Mar meeting (Exhibit 2).

Significant Public Comments

1. An angling club expresses support for the objective to reduce entanglements and specifically supports: enhanced gear marking requirements, a ten-pot per angler limit, a 14-day service interval, a validation stamp (in theory), and retaining the current FGC authority structure over the recreational fishery rather than delegating to DFW. Additional comments on the benefits of removing derelict gear to reduce entanglements were also included (Exhibit 3).

Recommendation

FGC staff: Re-refer subject to the Mar MRC meeting to discuss the specific options within the range of management measures proposed by DFW and to make a recommendation, and amend the rulemaking schedule for the recreational Dungeness crab fishery to commence with notice in Jun 2020.

MRC: Support DFW developing a suite of options to be analyzed for potential regulatory action that may include part or all of the management measures generally described at the Nov 5, 2019 MRC meeting.

DFW: Return the issue to MRC for discussion at its Mar meeting and a potential recommendation on proposed management measures for the recreational Dungeness crab fishery, with the intent to request authorization to publish notice in Jun 2020 for a suite of proposed regulations for the recreational Dungeness crab fishery.

Exhibits

1. [Staff summary from Apr 17, 2019 FGC meeting, Agenda Item 25 \(for background only\)](#)
2. [DFW presentation](#)
3. [Email from Scott McBain, Humboldt Area Saltwater Anglers, received Dec 10, 2019](#)

Motion/Direction

Moved by _____ and seconded by _____ that the Commission approves scheduling an additional discussion of potential management measures for the recreational Dungeness crab fishery for the March 2020 MRC meeting, and approves a change to the rulemaking schedule to consider notice in June 2020, discussion in August 2020, and adoption in October 2020.

STAFF SUMMARY FOR APR 17, 2019*For background only***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*For background only***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)

RECREATIONAL CRAB FISHERY

MANAGEMENT PROPOSALS TO PROVIDE MARINE LIFE PROTECTIONS

Fish and Game Commission Meeting
February 21, 2020
Sacramento

CDFW Marine Region



Credit: CDFW



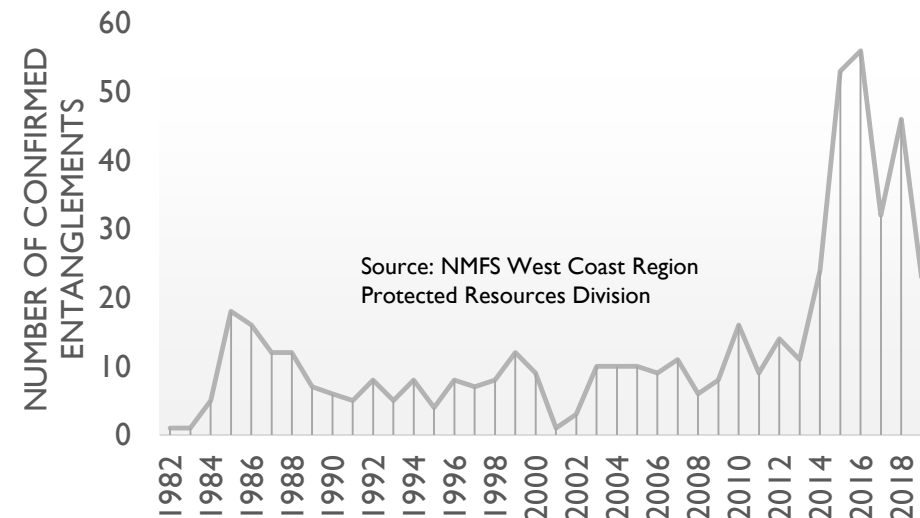
Credit: CDFW

MARINE LIFE ENTANGLEMENT RISK

- Species listed under Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) entangled in trap gear
- Since 2014 = 48 confirmed CA Dungeness crab gear entanglements, including 3 from recreational crab gear
- Since 2014 = 102 entanglements observed in CA from unknown gear types
- CA, OR, WA, and NMFS all working to reduce risk



Annual Confirmed West Coast Entanglements



CALIFORNIA'S RESPONSE

- Established the California Dungeness Crab Fishing Gear Working Group (2015)
- Discussions and recommendations have informed:
 - Depth-dependent restriction surface gear regs
 - Best Practices Guide
 - Develop and pilot Risk Assessment and Mitigation Plan (RAMP) for assessing risk and management action
- Senate Bill 1309 (McGuire - 2018)
 - Gear retrieval
 - Marking
 - RAMP (interim Director authority)

2019-2020 BEST PRACTICES GUIDE FOR MINIMIZING MARINE LIFE ENTANGLEMENT

Whale and sea turtle entanglement is a concern for fishermen, the public, California Department of Fish and Wildlife (CDFW), Ocean Protection Council and the National Marine Fisheries Service (NMFS). The California Dungeness Crab Fishing Gear Working Group developed this guide as part of a proactive and comprehensive approach to addressing entanglements in Dungeness crab gear. Taking these important steps will help maintain the fleet's access to this valuable resource.



BEST PRACTICES

- **ADJUST** trap line length when changing set location across depths by maintaining optimal scope.
- **MINIMIZE** knots, leads and scope when compensating for tides, currents, and weather.
- **ELIMINATE** excess lines floating at the surface. Floating line should only be used between the main buoy and the trailer.
- **REDUCE** slack surface line.
- **KEEP** vertical lines taut.
- **AVOID** setting gear in the vicinity of whales and sea turtles.
- **COMMUNICATE** locations of high whale activity to other fishing boats.
- **REMOVE** fishing gear before 11:59 pm on the last day of the season.
- **PROMPTLY** remove gear not being actively fished.
- **MARK** gear consistent with regulations.
- **MAINTAIN** gear to ensure lines and buoys are in good working condition so they do not break and get lost.
- **RETRIEVE** lost or abandoned commercial Dungeness crab traps as authorized in Title 14, CCR Section 132.2 and 132.7.



**KEEP LINE
BETWEEN
POT AND
MAIN BUOY
TAUT
AND
VERTICAL**



Credit: NMFS

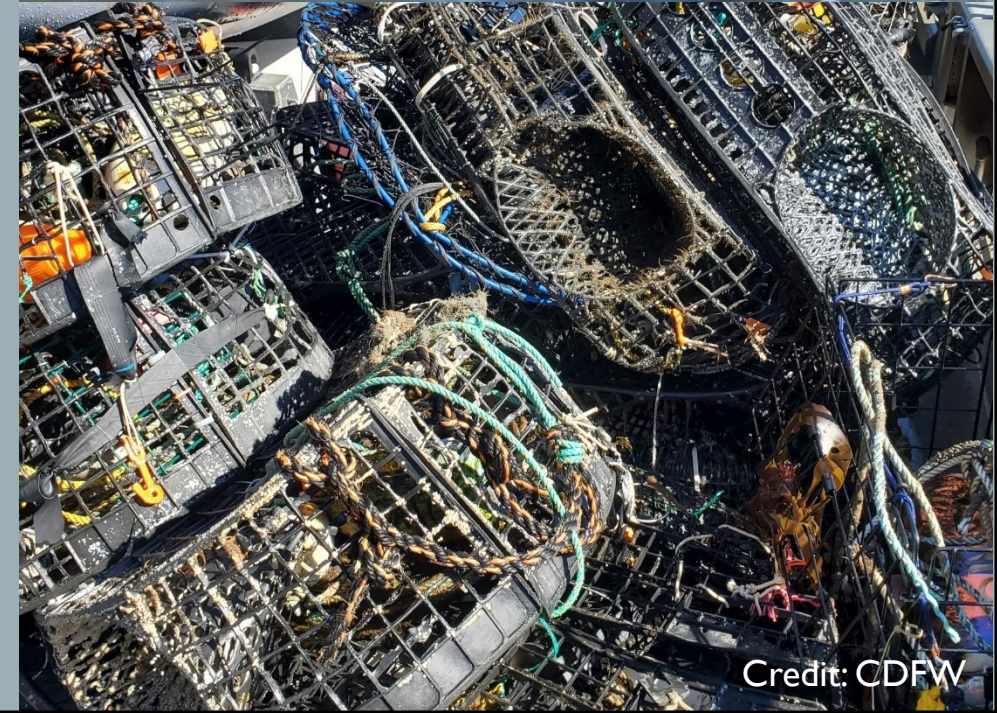


CDFW RESPONSE

- **Developing a Conservation Plan for Humpback Whales, Blue Whales and Leatherback Sea Turtles – May 15, 2020**
- **Developing RAMP Regulations to be effective by Nov 1, 2020**
- **Submitted Section 6 ESA Grant Proposals**
- **Regular Risk Assessments for the commercial Dungeness crab fishery**
- **Utilized Director Authority due to Significant Risk**



Credit: CDFW



Credit: CDFW



CDFW RESPONSE...CONTINUED

- **Implemented Surface Gear Limitations and Gear Removal Time – Fall 2018**
- **Implemented a Gear Retrieval Program – Fall 2019**
- **Implemented marking requirement for all commercial trap gear – Fall 2019**
- **Exploring gear modification and innovation**
- **Developing measures for recreational crab trap gear regulation changes**



Credit: CDFW



RATIONAL FOR RECREATIONAL REGULATION CHANGES

- Protect marine life and listed species under the ESA and MMPA
- Recreational crab fishery is operated in similar locations/configurations
- Recreational fishery has very limited rules regarding deployment, configuration, and servicing of gear
- Help prevent commercial sector from being penalized for entanglement
- Align with other trap fisheries and increase accountability



RECREATIONAL FISHERY REGULATION PROPOSALS

- **Enhanced Gear Marking**
 - Buoy or Unique Float
 - Simple, low cost and easy to incorporate
- **Trap Limit**
 - Establish limit (5-10 pots)
 - Reduces risk from # vertical lines
- **Service Interval Requirement**
 - Require minimum interval for gear check (9-16 days)
 - Minimize gear loss and by-catch



Credit: NMFS



Credit: NMFS

BUOY MARKING OPTIONS



Credit: CDFW



RECREATIONAL FISHERY REGULATIONS PROPOSALS

- **Validation Stamp**
 - Helps determine participation levels
 - Target outreach and communication
- **Director Authority**
 - Align with Director's authority (commercial)
 - Swift management response (entanglement risk)



Credit: CDFW

Credit: CDFW

STAKEHOLDER INPUT

- Calls and in-person meetings with representatives
- Discussed proposals at November MRC
- December FGC discussion resulted in three additional public outreach meetings
- **Comment Summary:**
 - Some support for proposals
 - North fishery different from central fishery
 - Limit surface gear, standardize buoys
 - Lost gear is an issue
 - Exempt passengers from validation
 - Sunset validation
 - Note fishing should be retained
 - Sport fair start



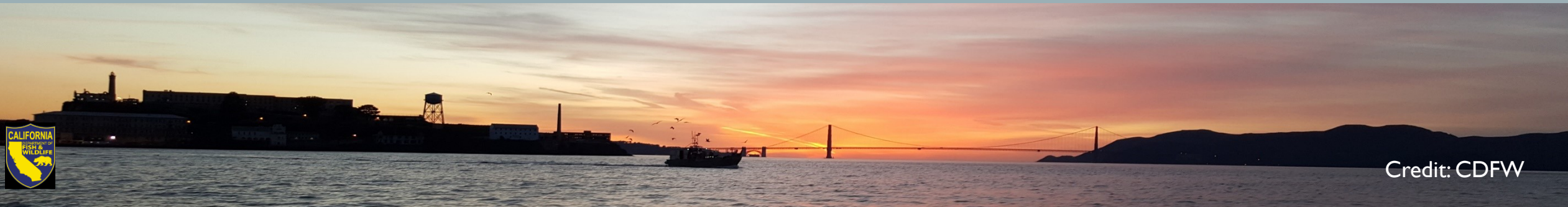
NEXT STEPS

- **Receive Commission Direction**
- **Discuss at March MRC?**
- **Finalize Options for Rulemaking Process?**
- **Recommended Revised Timeline**
 - **Notice June**
 - **Discuss August**
 - **Discuss and Possible Adoption October**
 - **Effective spring or fall 2021**



Credit: CDFW

More information:
wildlife.ca.gov/Conservation/Marine/Whale-Safe-Fisheries



Credit: CDFW

Sent: Monday, December 9, 2019 5:25 PM

To: Wildlife DIRECTOR <DIRECTOR@wildlife.ca.gov>

Subject: Comments on proposed 2020 Recreational crab gear regulations from Humboldt Area Saltwater Anglers

Name: Scott McBain

County: Humboldt

Message: December 9, 2019 To: California Fish and Game Commission Re: Proposed Modification to 2020 Recreational Crab Fishing Gear regulations to Reduce Risk to Whale Entanglement The Humboldt Area Saltwater Anglers (HASA) appreciates the opportunity to comment on the proposed modifications as presented by the Department to reduce risk of whale entanglements. HASA is an association whose purpose is to educate anglers in conservation and best management practices of fishing, work cooperatively with Federal and State Regulatory Officials on proposed regulations and provide our perspective on how regulations will affect our sector, from an opportunity and economic perspective. We strongly support the primary objective of reducing whale entanglement by active and derelict fishing gear off our coast, and have been participating on the Dungeness Crab Working Group and are well versed on the issues and conservation concerns. The Department has put forth five recommendations for modifying recreational crab gear regarding this issue, and we have included comments under each of the five recommendations: 1. Enhanced gear marking: We have always supported this effort and believe this can be easily accomplished by fishers marking each buoy with a large "S" (designating Sports) on all 4-sides of their crab buoy along with their GO number. 2. Trap Limit: We would support a ten-pot per angler restriction, specifically focusing on our ability to catch crab after the commercial season has started and crabs/trap is significantly lower than the beginning of the season. 3. Service Interval Requirement: We would support the 14-day proposal. Sports fishers do not use "wet storage" from our experience, but we would support no "wet storage" for any sector to reduce risk of entanglement. 4. Validation stamp: We could support a "validation stamp" to provide the Department with better accounting for involvement in the fishery, but the fee should be part of the license fee, or a very minimal cost. It would seem that the CRFS samplers could currently provide this same data, since they are already sampling a 20% rate at PR 1 sites and 10% at PR 2 sites. 5. Director Authority: We support the current authority structure that allows public input to the Commission prior to any proposed modifications to the regulations, and feel that this public process can be done quickly if needed under emergency procedures. Most importantly, we feel very strongly that derelict gear is a leading source of whale entanglement. Our coastal area north of Cape Mendocino has hundreds of abandoned crab pots through the spring and summer that create hazard for whales, vessels with propeller entanglement, and causes substantial lost fishing gear due to downrigger entanglement while salmon trolling for the sports and commercial sectors. Besides economic loss for sports and commercial fishers, this "ghost gear" increases entanglement risk. In addition, when this entanglement happens, it greatly increases our safety risk as we are trying to disentangle derelict gear from propellers and downriggers, often in a rough ocean. We have been actively working with the Department, Ocean Protection Council, UC Davis, and NMFS over the past several years to help develop a more effective derelict gear removal program. The latest incarnation has been largely ineffective off of the northern California coast, with hundreds of crab pots observed in our salmon fishing zones throughout the summer. In our assessment, this should be the number one priority for any proposed regulations, as this would have the most beneficial impact on reducing whale entanglement (our collective overall objective). Accordingly, our primary recommendation for reducing whale entanglements is a paired approach of 1) rigorous derelict gear removal program,

with 2) a careful application of crab gear regulations that specifically reduce risk of whale entanglement. Therefore, we strongly urge the Department to develop an effective program to remove derelict gear left after the close of the crab season, whether Commercial or Sports. We would appreciate the opportunity to work with the Department to contribute to the solution to this problem by helping in the development and implementation of an effective derelict gear removal program. Thank you for the opportunity to reply to these proposed regulatory modifications to the recreational crab fishery. We support the Departments efforts to reduce risk of whale entanglement causing injury or death, and will work actively with the Department in this endeavor. Please contact me to discuss how we can better assist in this effort. Respectfully, Scott McBain, President Humboldt Area Saltwater Anglers, Inc.