

STAFF SUMMARY FOR JUNE 24-25, 2020

13. DUNGENESS CRAB (RECREATIONAL)**Today's Item**Information Action

Discuss and consider direction on regulatory options and consider authorizing publication of a notice of intent to amend recreational Dungeness crab regulations for marine life protection measures.

Summary of Previous/Future Actions

- | | |
|---|---|
| • FGC/MRC considered management measures for the recreational fishery | Apr 2019-Feb 2020; various |
| • Most recent MRC update and recommendation | Mar 17, 2020; MRC, Santa Rosa/ teleconference |
| • FGC approved MRC recommendation | Apr 15-16, 2020; Teleconference |
| • Today's direction and notice hearing, with staff proposal to continue notice hearing to Aug 2020 | Jun 24-25, 2020; Webinar/teleconference or Aug 19-20, 2020 if notice hearing continued |
| • Discussion hearing | Aug 19-20, 2020; Fortuna or Oct 14-15, 2020 if notice hearing continued |
| • Adoption hearing | Oct 14-15, 2020; Oakland or Dec 9-10, 2020 if notice hearing continued |

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, and drastic increase in, entanglement in deployed commercial crab fishing gear. In response, DFW implemented a series of management measures centered on reducing the risk of whale and sea turtle entanglements in the commercial fishery.

In early 2019, FGC initiated discussions about potential management measures for the recreational Dungeness crab trap fishery to minimize similar entanglement risks (see Exhibit 1 for background). Management options were explored and refined at various FGC and MRC meetings throughout 2019 and early 2020, culminating in FGC action to schedule a rulemaking to commence in Jun 2020.

In Apr 2020, FGC received and approved an MRC recommendation for specific management measures to be included in the proposed rulemaking. FGC also requested that DFW return to the Jun notice hearing with more specific criteria and considerations for several items:

1. Director's authority – criteria to guide possible pre- or in-season action.
2. Service interval – criteria to provide a "severe weather extension."
3. Validation stamp – possible sunset period.
4. Proposed recreational gear retrieval program – consider adding a provision.

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As requested, for today's meeting DFW has provided feedback and recommendations related to the items for FGC consideration and direction (exhibits 2 and 3). Given the number of items still under consideration and in need of FGC direction, an initial statement of reasons (ISOR) has not been completed; with direction provided today, DFW can integrate regulatory options into a draft ISOR for the Aug 19-20, 2020 meeting.

Significant Public Comments

Coastside Fishing Club expresses concerns about basing criteria for the DFW director's action under a delegated authority on the Risk Assessment and Mitigation Program (RAMP), which was designed for the commercial fishery. The club states that metrics must be adjusted to reflect the lower risk of whale entanglements in the recreational sector; it proposes that the threshold for animal concentrations be adjusted by a factor of ten, suggests how to ascribe unidentified entanglements by sector, and suggests that in-season action should only be taken when animal concentrations have been documented via surveys (Exhibit 4).

Recommendation

FGC staff: Support DFW recommendations for regulatory options as reflected and explained in Exhibit 2; and continue the notice hearing to Aug (with Oct discussion and Dec adoption) to provide time for DFW to integrate direction on regulatory options into a draft ISOR.

Committee: Authorize publication of notice as proposed after providing direction on the four DFW-developed options.

DFW: Approve integrating four regulatory options into the proposed rulemaking: (1) include delegated authority for DFW director's action with reliance on its RAMP developed for the commercial fishery; (2) include a severe weather extension to the trap service interval using criteria already established in Fish and Game Code for the commercial fishery (specifically related to weather conditions); (3) do not include a sunset date for the proposed validation stamp; and 4) do not include a recreational gear retrieval program at this time, for the reasons identified by DFW in Exhibit 2.

Exhibits

1. [Staff summary from Mar 17, 2020 MRC meeting](#) (for background purposes)
2. [DFW memo](#), received Jun 16, 2020
3. [DFW presentation](#)
4. [Email from George Osborn transmitting a letter from Coastside Fishing Club](#), received May 7, 2020

Motion/Direction

Moved by _____ and seconded by _____ that the Commission approves including three specific management measures in the proposed changes to recreational Dungeness crab fishing regulations:

- Department director authority to delay the season's start or close the season early using the Department's Risk Assessment and Mitigation Program as developed for the commercial fishery to determine elevated risks to concentrations of marine life;

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- A “severe weather extension” to the trap service interval with provisions founded on California Fish and Game Code Section 9004, to condition trap servicing on “weather conditions at sea permitting;” and
- A validation stamp requirement without a sunset date specified.

Further, the Commission approves the staff request to continue the notice hearing to August 2020, followed by discussion in October 2020 and adoption in December 2020, and directs staff to continue to evaluate options for a recreational gear retrieval program, as time allows, for potential future consideration.

OR

Moved by _____ and seconded by _____ that the Commission approves the following specific management measures to be included in the draft changes to recreational Dungeness crab fishing regulations:

- Director authority to delay the season’s start or close the season early using the Department’s Risk Assessment and Mitigation Program as developed for the commercial fishery to determine elevated risks to concentrations of marine life, except as follows: _____;
- A “severe weather extension” to the trap service interval with provisions founded on California Fish and Game Code Section 9004, to condition trap servicing on “weather conditions at sea permitting,” except as follows: _____; and
- A validation stamp requirement [without or with a sunset date] specified.

Further, the Commission approves the staff request to continue the notice hearing to August 2020, followed by discussion in October 2020 and adoption in December 2020, and directs staff to continue to evaluate options for a recreational gear retrieval program, as time allows, for potential future consideration.

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For Background Purposes Only

5. WHALE/TURTLE PROTECTIONS – RECREATIONAL DUNGENESS CRAB FISHERY

Today's Item

Information

Action

Discuss and consider possible recommendation on DFW-proposed management measures for the recreational Dungeness crab fishery.

Summary of Previous/Future Actions

- | | |
|---|--------------------------------------|
| • FGC discussed commercial entanglement settlement and referred discussion to MRC | Apr 17, 2019; Santa Monica |
| • MRC discussed and recommended possible management measures for the recreational fishery | Jul 11, 2019; MRC, San Clemente |
| • FGC supported MRC recommendation | Aug 7-8, 2019; Sacramento |
| • MRC discussed possible management measures in more detail | Nov 5, 2019; MRC, Sacramento |
| • FGC approved MRC recommendation and requested additional DFW outreach to stakeholders | Dec 11-12, 2019; Sacramento |
| • FGC re-referred to MRC to refine management recommendations | Feb 21, 2020; Sacramento |
| • Today's update and potential recommendation | Mar 17, 2020; MRC, Santa Rosa |
| • Notice hearing | Jun 24-25, 2020; Santa Ana |
| • Discussion hearing | Aug 19-20, 2020; Fortuna |
| • Adoption hearing | Oct 14-15, 2020; Oakland |

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, and drastic increase in, entanglement in deployed commercial crab fishing gear. DFW has initiated implementation of collaboratively developed management measures centered on reducing the risk of whale and sea turtle entanglements in the commercial fishery. In Apr 2019, FGC initiated discussions around potential management measures for the recreational Dungeness crab trap fishery (see Exhibit 1 for additional background).

MRC held discussions in Jul and Nov 2019 to explore a suite of possible "common-sense" management measures, as proposed by DFW, and recommended FGC support for those measures (Exhibit 1). Following an FGC request in Dec 2019 for DFW to conduct further

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stakeholder outreach, DFW held workshops in Jan 2020 to solicit additional stakeholder input and inform a final proposal.

At the Feb 2020 FGC meeting, DFW reported on the outcomes of the Jan 2020 workshops that helped shape refinements to the DFW-proposed management measures (Exhibit 2) in five categories: gear marking (buoys or floats), trap limit (range of 5-10 pots), trap service interval (range of 9-16 days), validation stamp, and possible DFW director authority for swift management response to entanglement risk. At its Feb meeting, FGC approved moving forward to define proposed changes in the five categories, re-referred the item to MRC to refine specific aspects of the proposals, and approved a rulemaking schedule to commence in Jun 2020.

Since Feb, DFW has refined its proposal taking additional stakeholder and DFW enforcement feedback into consideration. In addition to recommendations within the five categories previously presented, DFW has added options related to surface gear, note fishing, and fair start provisions (Exhibit 3).

Significant Public Comments

Three recreational fishing organizations express support for some proposed measures, specifically gear marking and a service interval (16 days). The organizations express concerns about the extent of some proposed measures, specifically stamp validation (prefer requiring only for those deploying traps), trap limits (prefer collecting data on number of traps in use prior to setting an informed trap limit), and granting DFW director authority to take in-season actions (asserting that imposing the same commercial mitigation measures to the recreational fleet is inappropriate relative to the risk they each pose). They further request that the rulemaking not be rushed so that legal and factual differences between the commercial and recreational sectors can be considered when assigning corresponding management measures (Exhibit 4).

Recommendation

FGC staff: Support including the proposed management measures as recommended by DFW in a draft rulemaking for the recreational Dungeness crab fishery. Staff believes the proposed changes recommended by DFW provide a reasonable balance between resource protection needs, stakeholder desires, and DFW enforcement concerns.

DFW: Advance a rulemaking that includes the following proposed changes, with additional provisions and options shown in Exhibit 4, for the recreational Dungeness crab fishery:

- gear marking with small buoys or unique floats;
- a trap limit of 10 traps per angler from Nov 1 to Mar 31, and 5 traps from Apr 1 to season end;
- a service interval of 9 days (with severe weather extension option);
- a validation stamp for all participating anglers, with the option to sunset in 5 years;
- give the DFW director authority to delay the season or close the season early when entanglement risk is high, with a zonal option and FGC notification;
- specific surface gear requirements for surface buoys and line length;
- 'note fishing' (select one of two options); and

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- A fair start provision of no less than 5 days before commercial pre-soak.

Exhibits

1. Background document: Staff summary for Agenda Item 9, Nov 5, 2019 MRC meeting
2. Background document: Staff summary for Agenda Item 18, Feb 21, 2020 FGC meeting
3. DFW presentation
4. Email from Marc Gorelnik on behalf of Coastside Fishing Club, Humboldt Area Saltwater Anglers, and Coastal Conservation Association of California, received Jan 20, 2020

Committee Direction/Recommendation

The Marine Resources Committee recommends a proposed rulemaking that includes management measures to minimize the risk of whale and turtle entanglements in the recreational Dungeness crab fishery as recommended by the Department in Exhibit 3 and discussed today.

OR

The Marine Resources Committee recommends a proposed rulemaking that includes management measures to minimize the risk of whale and turtle entanglements in the recreational Dungeness crab fishery as recommended by the Department in Exhibit 3, except:

Enhanced gear marking: _____

Trap limit: _____ [5-10 pots]

Service interval: _____ [9-16 days]

Validation stamp: Applies to _____ [all licensed crab fishermen versus boat owner],
and include ____ **or do not include** ____ a 5-year sunset date

Director's authority: No ____ **or** Yes ____ with these parameters: _____

Surface gear: _____ [buoys, line length]

Note fishing: _____ [Option 1 or Option 2]

Fair start: _____

Memorandum

Date: June 8, 2020

To: Melissa Miller-Henson
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director

Subject: **Recreational Crab Rulemaking Guidance for Proposed Amendments to Section 29.8, 29.85, 701 - Title 14, CCR**

At the upcoming June Fish and Game Commission (Commission) meeting the Department is requesting additional guidance on four elements of the proposed recreational crab fishing rulemaking.

1. Validation stamp sunset period – The Department does not recommend a sunset period on the validation stamp. The additional license cost to anglers is expected to be minimal and the validation stamp is expected to support long term data collection needs. When the validation has outlived its purpose, it can be eliminated in a future rulemaking.
2. Service interval – Criteria used to provide a “severe weather extension.” The Department recommends using Fish and Game Code 9004 as a guide, “weather conditions at sea permitting.” Any criteria used to determine a weather exemption is very difficult if not impossible to define and apply due to the many factors involved. This section provides discretion to Enforcement officers based on recent sea conditions and accounts for vessel safety and operation at sea.
3. Director authority – The Department recommends using the proposed regulations to establish the Risk Assessment and Mitigation Program (RAMP) to guide the Director’s decision to take a management action, either pre-season or in-season. A management trigger for the recreational fishery would only be applied based on elevated risk due to marine life concentrations under the RAMP. Elevated risk could either cause a delay in the opening of the season or an early season closure.
4. Recreational gear retrieval program – The Department has considered the proposal to include a recreational gear retrieval program and does not recommend development of such a program at this time for the following reasons:
 - Considerations of authority need to be further explored to ensure a retrieval program can be appropriately implemented.
 - The commercial retrieval program started for the first time on May 22, 2020. Before layering on an additional program, the Department, wants to

implement and evaluate the current program to determine if there are any changes that need to be made.

- The Department has not conducted outreach on this proposal, and it was not included in the initial proposals that have been discussed with the recreational fishery participants dating back to July of 2019.
- The gear marking program for the recreational sector needs to be implemented first so that gear can clearly be identified once a retrieval program is established. The marking requirement is not expected to be implemented until November 2021.
- Given current workload commitments and COVID-19 impacts, adding any complexity or new elements to the rulemaking would result in additional delays to the adoption of the regulations

To better inform a future recreational gear retrieval effort, the Department recommends requesting existing commercial retrieval program permittees to voluntarily document the scope of the problem by identifying and reporting lost/abandoned recreational trap gear. If lost recreational pots are observed during commercial retrieval operations, Law Enforcement should be contacted for options to remove the gear.

If you have any questions or need additional information, please contact Ryan Bartling, Senior Environmental Scientist, at Ryan.Bartling@Wildlife.ca.gov.

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Recreational Crab Rulemaking

24 June 2020

Presented to:

Fish and Game Commission

Title

Presented by:

Ryan Bartling

Senior Environmental Scientist

Marine Region



Recreational Crab Proposals

- **Enhanced Gear Marking**
 - Unique buoy
- **Trap Limit**
 - 5-10 pots per individual
- **Service Interval**
 - 9 days
 - “severe weather extension” - use FGC 9004



Recreational Crab Proposals (Cont.)

- **Validation stamp**
 - Nominal cost add-on to license purchase
 - “Sunset” not recommend
- **Director’s authority**
 - Based on Risk Assessment and Mitigation Program
 - Season delay or early season closure based on elevated risk, including “fair and orderly provision”
- **Gear retrieval program**
 - Not recommend at this time

Thank You

Ryan Bartling

Ryan.Bartling@wildlife.ca.gov

Whale Safe Fisheries

www.wildlife.ca.gov/Conservation/Marine/Whale-Safe-Fisheries

From: George Osborn <george@osbornstrategies.com>
Sent: Thursday, May 7, 2020 5:24 PM
To: FGC <FGC@fgc.ca.gov>
Cc: Bonham, Chuck@Wildlife <Chuck.Bonham@wildlife.ca.gov>; Shuman, Craig@Wildlife <Craig.Shuman@wildlife.ca.gov>; Mastrup, Sonke@Wildlife <Sonke.Mastrup@wildlife.ca.gov>
Subject: Coastside proposal to mitigate entanglements

Dear Commissioners,

Please find attached a Coastside Fishing Club proposal to mitigate the risk of whale and turtle entanglements with recreational Dungeness Crab gear.

We appreciate that the Commission and Department has asked Coastside to work with you in finding an equitable approach.

Thank you.

--

George L. Osborn

[Redacted]
[Redacted]
[Redacted]

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May 7, 2020

VIA EMAIL: fgc@fgc.ca.gov

Ms. Samantha Murray, Vice-President
Mr. Pete Silva
California Fish and Game Commission
1416 Ninth Street, Suite 1320
Sacramento, CA 95814

Re: Appropriate Metrics for Risk Assessment in the Recreational Dungeness Crab Fishery

Dear Vice-President Murray and Commissioner Silva:

The Coastside Fishing Club appreciates the progress made with the Commission and Department on certain aspects of proposed regulatory changes to recreational Dungeness crab regulations. There remains one significant area, perhaps the most significant, where our efforts to engage with the Department have proved fruitless. While captioned as “director authority,” what’s really at stake is whether the recreational and commercial Dungeness crab fisheries present identical risks of whale entanglement and ought to be treated the same.

We earlier cited NMFS data to the Commission and Department establishing that recreational crab gear is responsible for a very small fraction of identified entanglements. Identified entanglement data show the commercial Dungeness crab sector has 16 times as many whale entanglements as the recreational sector. While it is true that the fishery responsible for entanglements is identified only about half of the time, there is no reason to doubt that the identified entanglements are at least broadly representative of the total. Accordingly, there shouldn’t be a genuine dispute that the recreational Dungeness crab fishery presents a much lower risk of whale entanglements than the commercial fishery.

The Department has prepared for the commercial fishery a Risk Assessment and Mitigation Plan (RAMP). Provisions of the RAMP are tied closely to the terms of a settlement agreement that concluded litigation relating solely to the commercial Dungeness crab fishery. The Commission was not a party to the litigation, of course, because the claims did not concern the recreational crab fishery.

We do not object to the adoption of risk assessment measures for the recreational crab fishery, but the metrics adopted must reflect the well documented lower risk of whale entanglements for this sector. To do otherwise would be patently arbitrary.

We have the following modest proposal based on language found in the commercial RAMP. We do not see the need for any additional surveys or the expenditure of additional funds to administer a recreational RAMP. The Director can rely on the data already collected to manage the commercial fishery.

- With reference to animal concentration numbers, Coastside suggests that the concentrations be increased by a factor of 10 to reflect the lower impact of recreational crabbing on entanglements when compared to the number of commercial entanglements. Coastside believes a factor of 10 to be conservative as actual known recreational entanglements are 1/16th that of the commercial sector. Given that the commercial RAMP specified animal concentration metrics produce an acceptable risk of entanglement in the commercial fishery, then appropriately scaled metrics for the recreational fishery would also present an acceptable risk.
- The commercial RAMP incorporates a scoring system that can be used in a recreational RAMP with one change. Unidentified entanglements should not be scored against the recreational sector. That provision appears in the commercial RAMP as a requirement of the commercial settlement agreement. Based on the best scientific information available, recreational gear is responsible for about 5% of whale entanglements. It would not be fair to charge the recreational sector with 0.5 of an entanglement for unidentified gear, roughly ten times the historical average while the commercial sector is charged much less than its own historical average.
- The recreational Dungeness crab opener should only be delayed (or closed in season) when a survey determines that animal concentrations exceed the threshold for the recreational sector (or as provided under the scoring of confirmed entanglements). The season should not automatically be delayed simply because the Department had not timely completed a survey.

Commissioners should understand that the recreational Dungeness crab fishery, particularly in District 10 (south of the Mendocino-Sonoma County line), becomes severely restricted upon the opening of the commercial season. The commercial fishery is a “derby” with nearly all commercial gear thrown into the fray immediately with the goal of harvesting all available crab as soon as possible. Consequently, the “productive” period of the recreational crab fishery terminates in much of the State on the commercial opening. Under current regulations, the productive period ranges from seven to fourteen days¹ in District 10.

¹ The recreational season opens on the first Saturday in November, i.e. in the range of November 1-7 depending on the calendar. Absent extenuating circumstances, commercial gear is deployed on November 14 in District 10.

Ms. Samantha Murray

Mr. Pete Silva

May 7, 2020

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If the recreational and commercial sectors are governed by the same RAMP metrics, then they open at the same time and the recreational sector is largely shut out of that year's fishery. The Department has suggested a five-day "fair start," but that further shortens an already abbreviated season. On the other hand, if different animal concentrations are used for the two sectors, the recreational sector will be less restricted and will naturally open earlier than the commercial sector, as it does today.

We look forward to discussing this proposal with the Commission and Department.

Respectfully submitted,

Coastside Fishing Club

cc: Fish and Game Commission, Chuck Bonham, Craig Shuman, Sonke Mastrup