



500 Capitol Mall, Suite 1600
Sacramento, CA 95814
T. 916.447.0700
F. 916.447.4781
www.stoel.com

DANIEL L. QUINLEY
D. 916.319.4658
daniel.quinley@stoel.com

January 17, 2020

VIA EMAIL ONLY

California Department of Fish and Wildlife
Attn: Craig Shuman
craig.shuman@wildlife.ca.gov

Re: Draft Risk Assessment and Mitigation Program Regulations

Dear Mr. Schuman:

On January 2, 2020, the California Department of Fish and Wildlife (“CDFW”) circulated “in-progress” draft RAMP regulations to members of the California Dungeness Crab Fishing Gear Working Group (“Working Group”). CDFW requested that Working Group members provide comments on these draft regulations by Friday, January 10, 2020. Following the Working Group’s Risk Assessment Meeting on Wednesday, January 8, 2020, CDFW extended the deadline for submission of comments to January 17, 2020. CDFW also stated that it would provide the Working Group with written explanations for portions of the “in-progress” regulations in order to facilitate constructive feedback. However, those explanations have not been provided as of the date of this letter.

This letter provides the California Coast Crab Association’s (“CCCA”) initial comments on the “in-progress” draft RAMP regulations. CCCA is a trade association that comprehensively and directly represents the interests of the fishermen, vessel owners, and processing companies who participate in, and rely upon, the California Dungeness Crab Commercial Fishery (the “Fishery”) – California’s most economically important fishery. CCCA is the only trade association that solely represents the interests of the participants in the Fishery.

As an initial matter, CDFW’s presentation of the draft regulations does not allow for meaningful feedback. The draft regulations were provided immediately after the holidays and in the midst of the 2019-2020 fishing season’s first month (18 days after the Central Management Area opened and 3 days after the Northern Management Area opened). Moreover, CDFW has provided no explanatory rationale for the draft regulations, nor has it identified the changes from the straw proposal it presented in September 2019. CDFW has also failed to provide any explanation for its apparent wholesale rejection of the detailed counterproposal submitted by CCCA in September 2019. Given these significant procedural and substantive shortcomings, CCCA’s ability to assess the draft regulations in an informed way and provide meaningful responsive comments is necessarily and considerably constrained.

Notwithstanding these shortcomings, CCCA has reviewed and considered the draft regulations to the best of its ability and provides the following initial substantive comments. CCCA continues to assess CDFW's draft regulations and may provide additional comments.

1. CCCA strongly disagrees with CDFW's proposed default "state-wide" Fishery closures when certain events occur. Any and all closures should be tailored to limited geographic areas, such as "Districts," in order to both address the specific threat identified by CDFW and reduce economic impacts to the Fishery. Indeed, the terms of the stay in the *CBD v. Bonham* litigation call for "district-wide" closures, not state-wide closures. For example, if whales exceeding actionable levels are observed north of Monterey Bay, CDFW should take management actions that affect only the area north of Monterey Bay necessary to reduce entanglement risk. State-wide closures will indisputably result in severe economic damage to the Fishery and the individuals and businesses that rely upon the Fishery for their livelihoods. If CDFW's goal is to regulate California's most economically productive fishery out of existence, then state-wide closures will achieve that goal.

2. The marine life concentration provisions are unclear and unsupported. Based upon the draft text presented by CDFW, it is impossible to determine whether and how the marine life concentration numbers will be applied because no geographic boundaries or density metrics are included. Without additional information or explanation, CCCA objects to the marine life concentration numbers presented in the draft regulations and to all of the marine life concentration provisions generally. CCCA objects to the erroneous presumption that mere co-occurrence of marine life and fishing effort equate to an unmitigable risk.

3. CDFW's proposal to implement a state-wide closure of the Fishery for a mere single *observation* (in an unknown area) of a leatherback turtle is patently unreasonable, arbitrary, and unlawful. Nothing in the Endangered Species Act, or in any other federal or state laws, authorizes or requires CDFW to implement such an overly precautionary and draconian management measure. In the long history of the Fishery, there has only been one confirmed interaction with a leatherback sea turtle (April 2016, during which a leatherback was released alive from Dungeness crab gear by a fisherman). The extreme rarity of the Fishery's interactions with leatherback sea turtles does not justify a preemptive closure of the Fishery based on a mere single observation.

4. As presented, the draft regulations render the role of the Working Group meaningless. This is unacceptable to CCCA, whose members have committed substantial time, effort, and resources to the Working Group. CCCA recommends that CDFW constructively work with the Working Group to develop new provisions for the RAMP regulations that create a

meaningful role for the Working Group. At a minimum, the draft regulations should be modified as follows:

- a. Section (b)(2) should require CDFW to provide a written explanation for any deviation from the Working Group's risk assessments and other recommendations.
- b. Section (b)(2) should specifically describe the role of the Working Group and the purpose of its obligation to evaluate risk and transmit such assessments and other recommendations to CDFW.
- c. Section (b)(3) should require CDFW to promptly evaluate additional information as soon as it is available, promptly notify and convene the Working Group to evaluate additional information, and promptly remove restrictions on the Fishery, if warranted by the best available information.

5. Section (c)(3) (Fleet Dynamics) of the draft regulations should include the best available data on (1) actively fished permits, (2) landings, and (3) gear concentrations, as well as any other relevant fleet dynamics data. In addition, this section imposes an untenable mandated trigger for a state-wide closure in the event of a delayed season (an opener between February 1 and March 31) if marine life concentration data is unavailable or if the season were to not open until April 1. CCCA is strongly opposed to any automatic triggers to close the spring fishery, and such triggers have no basis in science or law. Specifically, the northern spring fishery is a "beach" and inshore fishery. Most fishing occurs inside the 40-50 fathom whale migration corridor. Any necessary management measures should account for the actual dynamics of the spring fishery and such measures should not be based upon an ill-designed, one-size-fits all approach.

Furthermore, the viability of a spring fishery is critical to the continued economic health of the Fishery, *especially* in years with a late season opener. Fishermen from around the coast may decide to participate in the spring fishery in delayed years or in years, such as the 2019-2020 season, where the fall fishery results in lackluster landings. Automatic triggers independent of actual entanglement risk will economically harm the Fishery while achieving no conservation benefit whatsoever.

6. CCCA remains strongly opposed to closures of the Fishery (whether district-wide or state-wide) based on anything other than confirmed entanglements in confirmed commercial Dungeness crab gear.

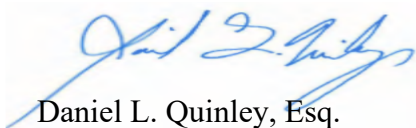
7. CDFW should consider other alternative fishing methods in addition to alternative gear to allow fishing to continue when there is elevated risk. For example, CDFW should

undertake the necessary steps to obtain experimental fisheries permits to test “longlining” and other vertical line reduction measures in the Fishery. Unlike “ropeless gear,” alternative fishing methods present a viable and immediate alternative to vertical lines.

8. CDFW should look to existing and successful regulatory models, including the management of the Hawaii longline fisheries, relevant portions of the Magnuson-Stevens Act (16 U.S.C. § 1801 *et seq.*), and National Marine Fisheries Service (“NMFS”) policies regulating marine mammal interactions with commercial fisheries and classifying and accounting for “non-serious” and “serious” injuries under the Marine Mammal Protection Act (“MMPA”) (16 U.S.C. § 1361 *et seq.*) to develop effective state regulations and a successful Habitat Conservation Plan/Incidental Take Permit application.¹

CCCA will continue to evaluate the “in process” RAMP regulations and will provide additional comments, as warranted. CCCA will also provide comments during the pre-public and public review periods. As indicated above, CDFW’s provision of explanatory rationales for its draft regulations will improve the quantity and quality of the comments it receives. CCCA remains committed to working with CDFW to develop draft regulations that both effectively mitigate entanglement risk and allow the Fishery to remain economically productive and viable.

Respectfully submitted on behalf of the California Coast Crab Association Board,



Daniel L. Quinley, Esq.

Ben Platt, President
F/V Miss Heidi
Crescent City, California

Bill Blue
F/V Brita Michelle
Morro Bay, California

Richard Axelson
F/V Lady René
Morro Bay, California

¹ NMFS policies make clear that “non-serious” and “serious” injuries impact marine mammal populations differently and must be accounted for differently when undertaking conservation programs and regulating commercial fishery operations. (*See National Policy for Distinguishing Serious from Non-Serious Injuries of Marine Mammals*, 77 Fed. Reg. 3233 [January 23, 2012]; *see also Taking of Marine Mammals Incidental to Commercial Fishing Operations*, 77 Fed. Reg. 71260 [Nov. 29, 2012].)

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Geoff Bettencourt
F/V/ Miss Moriah
Morningstar Fisheries
Half Moon Bay, California

Mark Gentry
F/V Rampaige
Bodega Bay, California

Scott Hockett
F/V/ Ace, F/V Blue Pacific, F/V Rita Marie
Noyo Fish Company
Ft. Bragg, California

Mike Cunningham
F/V/ Sally Kay
Eureka, California

Jonathan Gonzalez
Pacific Seafood – Eureka LLC
Eureka, California

Brett Fahning
F/V Mary Lu
Crescent City, California

cc:

Sonke Mastrup
sonke.mastrup@wildlife.ca.gov
Ryan Bartling
ryan.bartling@wildlife.ca.gov
Morgan Ivens-Duran
morgan.iven-duran@wildlife.ca.gov
Wendy Bogdan
wendy.bogdan@wildlife.ca.gov
Mary Loum
mary.loum@wildlife.ca.gov