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TO: Chuck Bonham
Director, California Department of Fish and Wildlife
1416 Ninth Street
Sacramento, CA 95814

RE: Draft proposed regulations for the implementation of the RAMP

Dear Director Bonham,

Thank you for the opportunity to provide comments on the Department of Fish and Wildlife's draft proposed regulations for the operation of the Risk Assessment and Mitigation Program (RAMP) for the state's Dungeness crab fishery ("the draft").

The period granted for us to consider the draft has been severely limited. In addition, supplemental documentation related to the draft including an Initial Statement of Reasons or an economic analysis of the impacts of these proposed regulations, which are significant, were not provided. Therefore, these comments comprise an initial, limited response to the contents of the draft and should not be considered comprehensive.

It is clear to the members of our organization that the regulatory scheme proposed in draft, if promulgated, would result in catastrophic economic and social harm to the Dungeness crab fishermen of California and to the coastal communities in which they live and operate. The draft contains numerous provisions that are overly burdensome to our members, the implementation of which would be impracticable and economically harmful.

In general, the Department must re-evaluate the approach to decision making proposed in the draft. The draft proposes an inflexible approach to management of the Dungeness crab fishery that excludes meaningful contributions from the California Dungeness Crab Fishing Gear Working Group ("Working Group"), which was established in statute in order to inform the decisions you make in regard to issues considered in the draft. This stands in stark contrast to the intent of the California legislature, as stated in Fish and Game Code §8276.1, that the Working Group inform the development and implementation of the RAMP and regulations promulgated therefor. It also contrasts various statements made by CDFW and the California Resources Agency embracing "adaptive management" as the preferred tool for implementing management actions in the face of uncertainty.

Definitions

The draft correctly defines the list of actionable species, and this list should not be expanded to include any other species. Additionally, the draft correctly defines alternative gear in broad terms, and this definition should not be revised to narrow the categories of gear that fit within its scope; this definition should be expanded to include alternative configurations of existing permitted fishing gear, for example the “ganging up” of multiple traps per vertical line.

Several of the definitions contained in the draft should be revised:

- “Fishing season” – The proposed definition is vague and overly prescriptive. The definition should be revised to define fishing season as “the period from November 15 through July 15 and any period of time in which it is lawful to deploy Dungeness crab fishing gear in ocean waters under the jurisdiction of the State of California”
- “Fishing Zone” – The proposed definition should be removed from the draft and the term revised to be “management district”, properly defined consistent with state law/code, and updated throughout the document as appropriate
- “Unknown fishing gear” – The proposed definition is ambiguous. The definition should be revised to include the following: “This definition does not apply to fishing gear identifiable in origin to other fisheries, fishing gear of a type or configuration that is not used in the Dungeness crab fishery, or equipment of non-fishery origin.”

Additionally, the draft should include a definition of the term “serious injury or mortality” that is consistent with the appropriate definitions found at 50 CFR §216.3. The draft should also define “best management practices” to be those recommendations made by the Working Group for the improved use and deployment of fishing gear.

Risk Assessment Schedule

Section (b)(2) should include a requirement for the consideration of any recommendation from the Working Group that a restriction implemented pursuant to these regulations is no longer necessary or appropriate for the protection of actionable species. In addition, the draft should be revised to require a written justification of any differences between the Department’s risk assessment and those developed by the Working Group.

Section (b)(3) should be revised to require the expeditious removal of restrictions when criteria for their implementation are no longer met, or if it is determined that such restrictions are no longer appropriate or protective of actionable species. This section should require that the Department evaluate new information as soon as it becomes available and to immediately convene and inform the Working Group in order to perform additional risk evaluations as may be required.

Acceptable Information

The draft inappropriately narrows the categories of information that can be included under the RAMP. The result of this narrow focus is an inflexible framework that contravenes principles of adaptive management based on the best scientific information available. We therefore strongly

encourage you to consider and adopt the recommendations made by the adaptive management project team in their draft guidance document developed late last year.

In addition, the scope of fleet dynamics information should be expanded to include information available from the E-Tix program. This information would enable the Department to determine with a great deal of precision the maximum amount of fishing gear that is being deployed in a specific area or management district over a relatively short period of time. Such information would enable the Department to ascertain whether gear densities are already sufficiently reduced if it is considering implementing gear density restrictions.

Triggers for Management Action

The triggers for management action present the most objectionable components of the draft. Fundamental revisions to the approaches outlined in this section are necessary, as many proposed triggers are unlawful, onerous, inflexible, and impracticable. Measures including the use of “best management practices” should be considered.

The management actions proposed in response to the number of confirmed entanglements with humpback whales should be revised upward. This recommendation reflects the known increases in abundance of the two Distinct Population Segments of humpback whales off the California coast as well as the pending implementation of NOAA guidance reconciling the MMPA stock evaluation framework with the ESA’s delineations of Distinct Population Segments.

In addition, consistent with the various approaches taken by NOAA under the MMPA, the draft should include an approach for the discounting or prorating of entanglements that are known to not result in significant injury or mortality or those that result in disentanglement. The draft should include requirements for the consideration of all information about the status of animals confirmed to be entangled in California Dungeness crab fishing gear during and after entanglement, including the nature of entanglements and appropriate prorating or discounting, and consideration of information from NOAA reports and communications with licensed marine disentanglement team members.

Further, the gear reduction responses outlined in the draft are unduly restricted to solely the removal of the arbitrary level of 50% of vertical lines. No state or federal agency has demonstrated the correlation between gear density in the Dungeness crab fishery (at any level of spatial resolution) and the level of risk of entanglement with ESA listed species. The percentage of gear contemplated in a regulatory response to confirmed entanglements should therefore be determined as part of a risk evaluation.

The management actions proposed to be taken in response to the presence of actionable species without confirmed entanglements in Dungeness crab gear are unacceptable. The language contained in the draft relating to observations of actionable species is vague and pertains to undefined geographic areas. The Department has not to date and will likely not be able to satisfactorily justify the proposed management responses to the presence of actionable species within Dungeness crab fishing grounds because no state or federal agency has demonstrated a credible or statistically significant relationship between the co-occurrence of Dungeness crab fishing gear with ESA listed species as it pertains to the risk of entanglement, nor has it been

demonstrated that the closure of the fishery in response to the proposed triggers will result in any demonstrable change to the risk of entanglement of ESA listed species.

In particular, the presence of a single leatherback sea turtle within Dungeness crab fishing grounds is proposed to trigger a closure of the fishery, whereas there has been just one confirmed entanglement of a leatherback turtle in California Dungeness crab fishing gear, resulting in the release of the animal unharmed. There is no justification for pre-emptive management action in response to the presence of leatherback sea turtles within Dungeness crab fishing grounds nor for an entanglement that does not result in a serious injury or mortality.

The management actions proposed in response to confirmed entanglement with California Dungeness crab fishing gear are vague and pertain to undefined geographic areas. The response to confirmed entanglements must occur at a management district at a maximum, with consideration of smaller areas deemed appropriate to respond to actual entanglement risk. This scope and extent are wholly consistent with the terms of the settlement in *CBD v. Bonham* and the principles established by the Working Group.

The management actions proposed in response to triggers unrelated to confirmed entanglements in California Dungeness crab gear proposed in the draft are therefore arbitrary and should be removed entirely from the draft. Instead, the draft should be revised to incorporate recommendations made by the Working Group during the early season. It should replace the actions taken in response to the abundance triggers with provisions for the notification of the fishery using mechanisms identified in the draft to the presence of actionable species.

The management actions proposed to be taken in response to the absence of information regarding the concentrations of actionable species are overbroad, arbitrary, and unacceptable. The proposal to delay the fishing season until December 1 if information related to the presence or abundance of actionable species is not based on any justifiable information relating to entanglement risk or the demographics of ESA listed animals. In addition, placing the burden of any failure to perform the requisite surveys on the fishery in the form of an automatic delay to December 1st, past the important, economically valuable Thanksgiving market, is punitive, overly burdensome, unfair, and arbitrary. These triggers should be removed from the draft.

In addition, the provisions for closure of the fishery “statewide” in response to “a season opener between February 1 and March 31” are ambiguous, arbitrary, and unacceptable, and should be removed from the draft. There is no credible justification for a closure of any extent at any time of the year based on a real assessment of entanglement risk due to the delayed opening of the fishery. The Department and the Working Group have at their disposal the capacity to evaluate entanglement risk and take appropriate management actions at smaller spatial scales, regardless of the timing of the opening of the season. The Department should revise this section to solely reflect the risk evaluation recommendations of the Working Group and only close areas at the management district level or smaller in response to recommendations stemming from the risk evaluation process.

Gear Reduction

The draft contains a proposal to issue two different colored buoy tags in future fishing seasons and to use each color to enforce its proposed gear reduction restrictions. This approach should be

eliminated for two reasons. First, it is impracticable for Dungeness crab fishermen to track the location of tags fixed to their buoys over the course of a fishing season, and it would be unreasonable and overly burdensome to require that fishermen retrieve traps marked with certain specific tags in order to remain in compliance. Second, the issuance of two colors unduly restricts the potential options for gear reduction as a management tool to 50% gear reduction only. The proposal to issue multiple colors of buoy tags should be removed from the draft.

Alternative Gear

The draft outlines in broad terms the categories of gear that are eligible for the alternative gear program. This is appropriate and should be maintained in future versions of the draft and proposed regulations. However, the draft requires that alternative gear demonstrate a 95% success rate during trials; this level would be unacceptable *in situ* and should be revised upward to at least 98%. In addition, several of the criteria for approval pertain to specific types of alternative gear, including for example requirements for description of a “release mechanism”, and identification of gear “remotely”, are not necessarily appropriate for all potential alternative gear types and should either be identified as non-inclusive or removed.

Conclusion

Without significant revisions, the draft proposed regulations for the implementation of the RAMP would result in extraordinary burdens to the California Dungeness crab fishing industry. Given the fact that these regulations are designed to be temporary, pursuant to the issuance of an Incidental Take Permit, the regulations should have an explicit sunset trigger.

PCFFA is committed to working with you and your staff to substantiate each of these suggestions and to evaluate the policies and procedures associated with the management of marine species at the federal level in order to significantly improve this proposal. We will be continuing to consider and evaluate this proposal and may provide additional comments as necessary.

We look forward to reviewing a significantly improved, scientifically justifiable draft proposed regulation that will ensure the long-term viability of the California Dungeness crab fishing industry, rather than destroy it.

Sincerely,



Noah Oppenheim
Executive Director