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DRAFT Risk Assessment and Mitigation Program Regulations for Dungeness Crab Fishing Gear Working Group Review

The following regulations are subject to revision until going to Public Notice in late February 2020.

Title 14, Section 132.8.

Risk Assessment Mitigation Program: Commercial Dungeness Crab Fishery

(a) The following definitions apply to this Section:

- (1) "Actionable Species" means Blue Whales, Humpback Whales, and Pacific Leatherback Sea Turtles found in California waters.
- (2) "Alternative Gear" means gear, gear modifications, other modifications and innovations, as certified by the department pursuant to subdivision (h).
- (3) "Close" or "closure" means the take and possession of Dungeness crab for commercial purposes is prohibited, except for with the use of Alternative Gear.
- (4) "Fishing Grounds" means the area of the Fishing Zone between shore and 100 fathoms.
- (5) "Fishing Season" means November 15 through July 15, including presoak time periods under Fish and Game Code section 8283, and including any delays or early closures pursuant to this regulation, public health concerns under Fish and Game Code section 5523, or quality testing under Fish and Game Code section 8276.2.
- (6) "Fishing Zone" means the following:
 - (A) Northern Management Area: North of Sonoma/Mendocino county line to Oregon Border from zero to 200 nautical miles offshore (U.S. Exclusive Economic Zone).
 - (B) Central Management Area: South of Sonoma/Mendocino county line to US/Mexico Border from zero to 200 nautical miles offshore (U.S. Exclusive Economic Zone).
- (7) "nm" means nautical mile.
- (8) "NOAA" means the National Oceanic and Atmospheric Administration.
- (9) "Pacific Leatherback Sea Turtle Critical Habitat" means those waters off the coast of California between Point Arena to Point Arguello east of the 3,000-meter depth contour as defined in federal regulation for Leatherback Critical Habitat (50 CFR 226.07).
- (10) "Unknown Fishing Gear" means fishing gear whose fishery of origin cannot be determined. This definition does not apply to entanglements in gear identifiable in origin to other fisheries or to non-fishery origins (e.g. mooring lines or research equipment including but not limited to weather buoys and navigational aids).

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(11) "Working Group" means the California Dungeness Crab Fishing Gear Working Group, established by the department, in partnership with the Ocean Protection Council and NOAA, on September 21, 2015, as defined by its most recent charter as it may be amended from time to time.

(b) Risk Assessment Schedule: The department shall conduct the risk assessment as follows:

(1) The Director shall evaluate entanglement risk and need for management action as information becomes available, but at least monthly between November 1 and July 15 while the Fishing Season is open.

(2) At any evaluation, and prior to taking action under subdivision (d), the Director shall consider any available recommendation the Working Group may have provided on assessing entanglement risk and management response.

(3) While the fishery is operating under a restriction pursuant to this section, the Director will perform additional risk analysis as additional information becomes available and remove restrictions as criteria in (d) are no longer met.

(c) Acceptable Information: the department may only consider the following information, when available, to assess entanglement risk:

(1) Confirmed Entanglements: Confirmed Entanglement means a marine life entanglement that occurs during the current Fishing Season that is confirmed by notification from NOAA. Confirmed entanglements will be assessed over a single Fishing Season.

(2) Marine Life Concentrations: Marine life concentrations will be used as an indication of marine life migration into or out of Dungeness crab Fishing Grounds. The department may conclude presence of Actionable Species based on the following:

(A) Systematic surveys conducted in California waters by NOAA or the department that cover a minimum of 200 linear nm in the Dungeness crab Fishing Grounds during the following time periods: (1) from October 1 until the Fishing Season opens statewide; and (2) from March 1 until the Fishing Season closes statewide.

(B) Telemetry data collected by NOAA for Pacific Leatherback Sea Turtles in California waters, which may include satellite-based tracking and acoustic transmitters.

(3) Fleet Dynamics: The anticipated opening of the Fishing Season and any other changes to the Fishing Season pursuant to quality testing and public health advisories.

(d) Triggers for Management Action and Associated Management Response. The Director shall restrict the take of commercial Dungeness Crab as follows. Actions shall apply statewide; except if information are available for a Fishing Zone each Fishing Zone may be treated independently, or if the management response as defined below is limited to a specific geographic area. If two triggers are attained for the same Fishing Zone(s) the more restrictive management action shall apply.

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(1) Confirmed Entanglements shall trigger the department to take management action, as listed by species below.

(A) Humpback Whales:

1. Confirmed Entanglements in California commercial Dungeness crab gear
 - a. For 1 whale entanglement: impose a 50% reduction in gear.
 - b. For 2 whale entanglements: Close fishery.
2. Confirmed Entanglements in Unknown Fishing Gear
 - a. For 2 whale entanglements: impose a 50% reduction in gear.
 - b. For 4 whale entanglements: Close fishery.

(B) Blue Whales:

1. Confirmed Entanglements in California commercial Dungeness crab gear
 - a. For 1 whale entanglement: impose a 50% reduction in gear and prohibit take and possession of Dungeness crab for commercial purposes seaward of a line approximating the 50-fathom depth contour along the mainland coast and along islands and offshore seamounts. The 50-fathom depth contour is defined by straight lines connecting the set of 50-fathom waypoints as adopted in Federal regulations (50 CFR part 660, Subpart C).
 - b. 2 whale entanglements: Close fishery.
2. Confirmed Entanglements in Unknown Fishing Gear.
 - a. For 2 whale entanglements: impose a 50% reduction in gear and prohibit take and possession of Dungeness crab for commercial purposes seaward of a line approximating the 50-fathom depth contour along the mainland coast and along islands and offshore seamounts. The 50-fathom depth contour is defined by straight lines connecting the set of 50-fathom waypoints as adopted in Federal regulations (50 CFR part 660, Subpart C).
 - b. For 4 whale entanglements: Close fishery.

(C) Pacific Leatherback Sea Turtle:

1. Confirmed Entanglement in California commercial Dungeness crab gear.
For 1 turtle entanglement: Prohibit take and possession of Dungeness crab for commercial purposes in the Pacific Leatherback Sea Turtle Critical Habitat.
2. Confirmed Entanglements in Unknown Fishing Gear
 - a. For 1 turtle entanglement: Prohibit take and possession of Dungeness crab for commercial purposes seaward of a line approximating the 30-fathom depth contour along the mainland coast and along islands and offshore seamounts. The 30-fathom depth contour is defined by straight lines connecting the set of 30-fathom waypoints as adopted in Federal regulations (50 CFR part 660, Subpart C).

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b. For 2 turtle entanglements: Prohibit take and possession of Dungeness crab for commercial purposes in the Pacific Leatherback Sea Turtle Critical Habitat.

(2) Marine Life Concentrations: Action shall be taken based on information in subsection (c)(2) as listed by timeframes and species below.

(A) November 1 through December 31 or until the fishery opens statewide.

1. Humpback Whales – If the number of observed animals exceeds 50 animals or the density exceeds XXX animals per square nm, and:

a. If it is prior to the Fishing Season opening, the Fishing Season shall be delayed in 15-day increments, if each increment is appropriate based on available data, until December 31.

b. If the Fishing Season is open: impose a 50% reduction in gear.

2. Blue Whales – If the number of observed animals exceeds 4 animals or the density exceeds XXX animals per square nm:

a. If Blue Whales are found seaward of the 50-fathom depth contour, prohibit take and possession of Dungeness crab for commercial purposes seaward of a line approximating the 50-fathom depth contour along the mainland coast and along islands and offshore seamount. The 50-fathom depth contour is defined by straight lines connecting the set of 50-fathom waypoints as adopted in Federal regulations (50 CFR part 660, Subpart C).

b. If two or more Blue Whales are found shoreward of the 50-fathom depth contour, the fishery will close.

3. Pacific Leatherback Sea Turtles – If one or more individuals is observed, and:

a. If it is prior to the Fishing Season opening: the Fishing Season shall be delayed in 15-day increments, if each increment is appropriate based on available data, until December 31.

b. If the Fishing Season is open: Prohibit take and possession of Dungeness crab for commercial purposes in the Pacific Leatherback Sea Turtle Critical Habitat.

(B) March 1 through July 15 or until Fishing Season closes statewide

1. Humpback Whales –

a. If the number of observed animals exceeds 25 animals or the density exceeds XXX animals per square nm, impose a 50% reduction in gear.

b. If the number of observed animals exceeds 50 animals or the density exceeds XX animals per square nm: Close fishery.

2. Blue Whales - If the number of observed animals exceeds 4 animals or the density exceeds XXX animals per square nm:

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- a. If Blue Whales are found seaward of the 50-fathom depth contour, prohibit take and possession of Dungeness crab for commercial purposes seaward of a line approximating the 50-fathom depth contour along the mainland coast and along islands and offshore seamount. The 50-fathom depth contour is defined by straight lines connecting the set of 50-fathom waypoints as adopted in Federal regulations (50 CFR part 660, Subpart C).
- b. If two or more Blue Whales are found shoreward of the 50-fathom depth contour, the fishery will close.

3. Pacific Leatherback Sea Turtles – If one or more individuals is observed, close Fishery.

(3) Fleet Dynamics:

(A) For a season opener before December 1: If there are no data available to inform marine life concentrations, the fishery will open statewide on December 1. If such data is available, the Fishing Season shall open pursuant to Fish and Game Code section 8276 unless subdivision (d)(2) requires a management action.

(B) For a season opener between February 1 and March 31, the fishery shall close on April 1 statewide unless data are available to marine life concentrations. If such data is available, the criteria in subdivision (d)(2) will determine the need for a management response.

(C) For a season opener after April 1, fishery will remain closed.

(e) Notification process for actions taken in response to management risk.

(1) The Director shall provide a minimum of 72 hours' notice before implementing any management action regarding take of Dungeness crab.

(2) Notice of any management actions shall be communicated, at a minimum, via a department press release and the department's "Whale Safe Fisheries" webpage. The department will request the US Coast Guard issue a Broadcast Notice to Mariners via VHF/Channel 16.

(f) Gear Reduction. The department may decrease the amount of gear an individual permit holder can use due to marine life entanglement risk based on a proportion of assigned tier allotment. Gear reductions by tier allocation shall be implemented as follows.

(1) During the 2020-2021 Fishing Season, when directed by the department, permit holders shall have a minimum of 50% of the tags required to be attached to the buoy under Fish and Game Code section 8276.5 onboard the permitted vessel and available for inspection by the department upon request.

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(2) Starting in the 2021-2022 Fishing Season, tags attached to buoy issued pursuant to Fish and Game Code section 8276.5 will be issued in two colors (50% each color). During a gear reduction directed by the department, the tag color that may be used to take Dungeness crab for commercial purposes will be specified. The unused tags (colored tags not allowed to be fished) shall be onboard the permitted vessel and available for inspection by the department upon request.

(g) Alternative Gear. Alternative Gear shall be permitted in Fishing Zones closed due to marine life entanglement risk pursuant to subsection (d) 14 calendar days following such closure.

(h) Alternative Gear Certification Process.

(1) The department shall approve Alternative Gear types for use to take Dungeness crab for commercial purposes as allowed pursuant to this regulation upon written request.

(2) Written requests for Alternative Gear certification shall be submitted to the department at WhaleSafeFisheries@wildlife.ca.gov. Written requests shall contain the following information:

(A) Name, address, and contact information of requestor; and, if appropriate, name, address, and contact information of gear manufacturer;

(B) Detailed description of gear and how it operates;

(C) Research trial results, including (i) the number, depth and location of trials (ii) number of successful deployments and retrievals of not less than 95%; and (iii) ocean conditions during trials

(D) Documentation of how the gear meets the following criteria:

(i) detectability by the department, fishermen and public, including description how location of gear is available visually or virtually, equipment specifications, required specialized equipment or training;

(ii) means of retrieval, including description of release mechanism; equipment and any specialized training needed to deploy and/or retrieve gear, mechanism to address equipment malfunction, safeguards to prevent gear loss;

(iii) means of trap identification, including description of mechanism to identify gear to permit holder both remotely when submerged and at the surface;

(iv) evidence gear reduces risk or severity of entanglement; and

(E) Description of a recovery gear plan in the event gear retrieval is unsuccessful

(F) Description of a vessel electronic monitoring system used to document fishing effort and location

(G) Signed statement verifying all information provided is accurate.

(3) The department shall certify or reject the request within 60 business days of receipt.

(4) The department shall update the list of certified gear at least once annually and make it available on the department's web site (www.wildlife.ca.gov/crab)

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(5) The department shall decertify and remove from the list any gear(s) it determines does not meet the standards set forth in this section. 14 days-notice shall be provided before gear is decertified.

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