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**PACIFIC COAST FEDERATION
of FISHERMEN'S ASSOCIATIONS**



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In Memoriam:
Nathaniel S. Bingham
Harold C. Christensen
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16 February 2016

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Charlton Bonham, Director
California Department of Fish & Wildlife
1416 9th Street, 12th Floor
Sacramento, CA 95814

SENT VIA EMAIL

RE: Proposal to Open Dungeness Crab Fishery at 38th Parallel

Dear Director Bonham,

We write to support the position expressed in the letter submitted to you on 15 February by several members of California's Dungeness crab fleet and to offer supplementary comments.

The Pacific Coast Federation of Fishermen's Associations (PCFFA) is the largest organization of commercial fishermen and women on the West Coast. For the last 40 years, we have been leading the industry in assuring the rights of individual fishermen and fighting for the long-term survival of commercial fishing as a productive livelihood and way of life. Our members are primarily salmon and crab fishermen, many of whom have been active on California's seas since before PCFFA was formed.

We appreciate the difficult position the Department finds itself in. PCFFA, in unity with the overwhelming majority of the fleet, supports adhering to the statewide season-opening protocol described in the Dungeness Crab Task Force (DCTF) Executive Committee's 9 November guidance, which recommends keeping the entire state closed to commercial crabbing rather than opening separate sections of coastline as they become clean. However, we understand that a

small minority of the fleet would like to take advantage of any fishing opportunity as soon as possible.

Although we sympathize with those members of the fleet that are experiencing financial hardship due to the ongoing season closure, we cannot support the Department's offer to open the season south of an arbitrary management line at the 38th parallel.

The original reason for supporting a statewide opener remains. Crabs do not appear to respect the lines human beings draw to demarcate the surface area of the ocean. We believe there is legitimate concern that crabs may migrate across any line used in the management of this domoic acid crisis, which could result in the insertion of tainted seafood into the retail market. The best and most precautionous method to ensure that we are harvesting clean crab is to wait for all samples in the state to test clean. Our members are not in the business of endangering the health and safety of the public, and we are extremely concerned about the potential for one domoic acid poisoning incident to threaten the market for California seafood for years to come.

We have several concerns specific to the proposal to open crabbing from Pt. Reyes south.

First, the proposed management line is unprecedented. We are concerned that setting an arbitrary management line sets a new precedent that the Department or other agencies with jurisdiction over the ocean can set new management lines without due process of law. The Fish & Game Code describes the management lines and areas for the Dungeness crab fishery. *See* Cal. Fish & Game Code §§ 11000-11039, 8276. Please recognize that drawing a new line at the 38th parallel represents the opening of only a portion of an established manage area. Such a restriction on fishing area without due process of law may be unreasonable in light of the accepted and abided management lines described in the Code.

Second, the concentration of fishing effort on the area proposed for opening could result in public safety risks. As Director, you have the authority to promulgate emergency regulations so as to protect the public health and safety, as you did with the emergency closure of the season. Cal. Gov. Code §§ 11342.545; 11346.1. Opening crab grounds in one confined area, without firm knowledge that other areas will open in the near future, could force the majority of the 600-odd crab permit-holders to converge in front of the Golden Gate in an unprecedented derby fishery. Individual concerns for suitable weather, adequate provisioning, proper vessel maintenance, and fishing etiquette may be downplayed in the face of the opportunity to harvest what few crabs are available before the resource is swept up and the market is over-supplied. This could lead to unusual risk-taking in high seas, with inexperienced crew, and in a concentrated area of vessels. The possibility of a catastrophic accident in California's Dungeness crab fishery is significantly higher with a concentrated opener. We advise spreading fishing effort out across the state rather than concentrating it in one area, and if necessary, using your emergency authority to avoid a preventable catastrophic loss of life.

Third, we are concerned that the concentration of fleet-wide effort on the southern crab grounds may result in serious impacts on the resiliency of the crab resource, as well as the resiliency of the market for crab. The Department is the trustee of public trust wildlife resources of the State, including Dungeness crabs. Cal. Fish & Game Code § 711.7(a). As trustee, you have a duty of

loyalty to the trust beneficiaries (e.g. the public, including the crab fleet) to act in their best interest, and a duty to prevent or mitigate harm to the trust principle. Opening crab grounds south of Pt. Reyes will induce crabbers to converge on those grounds and concentrate fishing effort in those areas, well beyond the opening of other areas of the state if fair start rules apply. This could result in a wiping out of crabs that are the trust principle. Moreover, concerns over the relative health and safety of California crab has lead many in the public to publicly state that they would not buy our product, even with Department of Public Health assurances that crabs are safe. This has already lead many buyers to state that they would buy minimal poundage. With the vast oversupply of labor, the finite supply of crab, and the minimal demand for product, we have the makings of a market disaster, which is clearly not in the public's, or the crab fleet's, best interest. We advise opening broader crab grounds to prevent violations of the Department's duties as trustee of our shared crab resource.

Fourth, we have appreciated the measure of certainty that the Department's adherence to the original DCTF recommendations has brought to bear during this ongoing crisis. With so many unknowns surrounding the crab fishery this year, the knowledge that a protocol has been in place has allowed PCFFA members to make at least some informed business decisions about how best to weather this crisis. Although we do appreciate the opportunity to work with the Department on an option to mitigate the financial impacts of this terrible crab season, we believe there are important countervailing reasons for adhering to the original understanding and proceeding with a broader season opener.

Fifth, we are concerned that opening a portion of a management zone leaves the remainder of that zone without fair start protection. This is a substantial erosion of the fair start principle, and would set a precedent that could lead to further erosion, and destruction, of that principle. Without strong fair start protection, quality testing will not happen; in our view, quality testing has been beneficial overall for fishermen, wholesalers, and consumers.

To those who support proposal to open the season below Pt. Reyes, we would ask that they consider the very real possibility that no market exists for crab caught pursuant to a Southern opener this year, and that the competition on the crab grounds combined with the lack of demand may result in little to no income arising out of a piecemeal opener. Moreover, the potential for detrimental impacts on the resource is heightened this year due to concentrated fishing effort and the current state of crabs in their mating and molting cycles; and that the potential for accidents at sea are heightened with the potential effort shift. While we reiterate our appreciation of the financial plight many of the fleet are enduring, we believe that taking the long view is warranted.

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For these reasons, we reiterate our call for a statewide opener, and would be willing to discuss the potential for a district opener if domoic acid testing in the North remains problematic. We believe these steps are critical to protect the entire fishing industry in California, as well as the Dungeness crab fishery on which our members depend. Please feel free to contact the undersigned if you have any questions relative to the foregoing. Thank you for your continued efforts to work with the crab fleet in managing this ongoing disaster.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Sloane', with a stylized, cursive script.

Tim Sloane
Executive Director

CC: Craig Shuman, CDFW Marine Region Director
Dungeness Crab Task Force
Senator Mike McGuire
Assemblyman Jim Wood