

Public comment submitted to the California Dungeness Crab Task Force (DCTF) on April 14, 2018

My name is George Castagnola. I'm a 67 year old, retired high school teacher whose plan was to spend his "golden years"...peacefully fishing.

However I made the mistake of going to law school and here I am. My family has been involved in the fishing business since before Columbus. Consequently when fishermen have legal problems, they tend to find me...and it is on behalf of them that I am writing this.

When a case goes to court, the judge looks to see how higher courts have ruled on the issue and they have an obligation to follow what the higher court said.

If there are no higher court decisions, then the judges use their own discretion to interpret the law.

The problem is that Marine Reserves and the current state of the Crab Fishing Industry are creating issues that have never been decided by higher courts. One reason is that they are new issues. Another reason is that crabbers don't have the money to hire lawyers to take these cases to higher courts.

Consequently, I've been in front of 4 different judges and had each judge interpreted the same law differently.

One of the issues that is undisputed is that some crab traps "move." They get snagged by floating debris like trees, driftwood, kelp, etc. Storms throw them all over the place. Whales snag them, they get snagged onto boats and dragged, poachers move them, etc.

Crab pots from Northern California have been found as far north as Alaska and as far south as Mexico.

To prevent lost crab traps from killing crabs, they are all equipped with a destruction device whereby lost pots open so as to release crabs. For this reason, lost traps do not pose a danger to marine life.

However they do pose a danger to crab fishermen who are being arrested and criminally charged.

One judge held that if a storm, whale, floating debris, other boat, poacher, etc. moved a crabber's pots into a Marine Protected Area, the crabber who owned the pots was guilty of fishing in a Marine Protected Area...even if the crabber did not know the traps were in the Marine Protected Area.

I also had a District Attorney and a Game Warden, tell the judge that this was the "Law."

However a different judge held that a crabber would not be guilty of taking crabs from a Marine Protected Area unless the crabber actually placed the pots in the Marine Protected Area, pulled the pots in the Marine Protected Area and kept the crabs.

Two other judges took positions somewhere in between.

Judges, District Attorneys, Game Wardens, Legislators, and Crabbers all need to know the law and this task force needs to provide some clarification.

They also need to know what the effect of the law is, in order to determine if it is accomplishing what it is supposed to accomplish.

At one time I was told by a game warden not to worry because wardens have discretion and they enforce the "spirit" of the law, not the "letter" of the law...and I know that in the past this has been true.

However recently I've seen a change in the attitude of some Game Wardens, and I've seen a drastic change in the attitudes of District Attorney's and Judges.

Where I'm going with this is that some guidance and clarification is needed here and the Dungeness Crab Task force is in a position to provide this guidance and clarification.

Consequently, the following needs to be addressed:

1. Are crab fishermen guilty of "deploying crab pots in a Marine Protected Area and Taking crabs from a Marine Protected Area" if they deploy crab pots outside of a Marine Protected Area and the pots are dragged into the Marine Protected area by storms, kelp, whales, other fisherman, drift wood, storms, floating debris, other boats, etc."
2. I have a client who had a mechanical breakdown and might have been unable to service his pots for potentially two weeks.

One game warden said that the crabber could be in violation of the rule requiring that the traps be serviced every 96 hours weather permitting...and that in the case of a breakdown, the crabber is required to get a waiver from DFW and hire another boat to pull his pots every 96 hours and release the crabs in that pot.

It is my understanding that the law has never been interpreted that way and that DFW has always exercised discretion in this situation.

However I believe this is an unreasonable interpretation and mechanical breakdowns as well as adverse weather conditions should excuse a crabber who is acting in good faith from servicing his pots every 96 hours.

3. In another situation a game warden told me that if a crabber's traps are dragged into a Marine Protected Area by kelp, whales, floating debris, boats, poachers, etc. the crabber can go into the Marine Protected Area, and remove his trap from the Marine Protected Area as long as the crabber releases any crabs that are in the pots.

4. I have also been told by one game warden that owners of lost pots can be prosecuted for crabbing out of season, failing to service pots every 96 hours, and failing to clearly number the traps when growth covers the numbers.

Once again the law has never been interpreted this way. However after my experiences with four different judges, a district attorney and some wardens, the industry needs some clarification.

Thank you for your time.

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