



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND GAME
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EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



April 30, 2012

Philip Anderson
Director
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091

IMPLEMENTATION OF CALIFORNIA DUNGENESS CRAB TRAP LIMIT PROGRAM

Dear *Phil* ~~Mr. Anderson~~:

Thank you for taking the time to write me on March 30, 2012 to express your concern that the Dungeness crab trap limit program (Program) being implemented by the California Department of Fish and Game (Department) "reflects a serious departure from the coordinated approach to coastal Dungeness crab regulation," and urge "reconsideration of the default pot limit protocol that considers only California landings." You are probably aware that the Department subsequently received a similar letter, dated April 16, 2012, from Mr. Roy Elicker, Director of the Oregon Department of Fish and Wildlife. Maintaining a good working relationship between our respective agencies is important to me.

Therefore, I wanted to take the opportunity to reply to your March 30th letter and clarify certain misconceptions about the crab trap program here in California. I will be providing a similar letter to Roy. Please do not hesitate to contact me directly with additional questions or concerns.

By way of review, the tri-state coordination of Dungeness crab management is conducted under the auspices of the Pacific Marine Fisheries Compact (Compact), which created the Pacific States Marine Fisheries Commission (PSMFC). Pursuant to Article IV of the Compact, the PSMFC recommends the coordination of the police powers of the several states within their respective jurisdictions "to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the signatory parties hereto." The PSMFC then created the Tri-State Dungeness Crab Committee, whose March 1996 recommendations concerning "Test Fishery and Season Opening Decision Procedures," and "Procedure for Establishing Fishing Zones" formed the basis of the Tri-State Memorandum of Understanding (MOU). Article VIII of the Compact additionally provides that nothing in the Compact shall be construed "to limit the powers of any state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any state imposing additional conditions and restrictions to conserve its fisheries."

Our three states have each codified the Compact.¹ The fishery subject to the tri-state MOU is divided into two zones: the northern zone, which runs from mid-Oregon north to the Canadian border; and the southern zone, which runs from mid-Oregon south to Point Arena, California. The crab seasons of the tri-state zones are coordinated to begin on December 1.² Although Washington and Oregon fall entirely within the tri-state management regime, California also manages a significant Dungeness crab fishery *below* Point Arena (Fish and Game District 10) that opens November 15. This fishery is separate from the tri-state fishery.³

At the outset, we note that nothing in California's crab trap limit program conflicts with the management regime established by the Tri-State MOU and effectuated by the laws of our three states. To be clear, California will continue to manage its Dungeness crab resource within its jurisdiction under the "3-S" [size-sex-season] regimen, and all requirements governing trap escape mechanisms, buoy identification, pre-season soaking times, and softshell testing protocols will remain unaffected.⁴ Indeed, the crab trap limit program is entirely consistent with Washington's own stated Dungeness crab management goals of maintaining a viable and stable fishery that is in balance with resource needs, supporting individual fishers as well as coastal communities, and providing a steady and reliable flow of product throughout the season.⁵

It is important to note that the crab trap limit program in no way prejudices nonresident fishermen. In a memorandum dated April 12, 1999, the Attorney General of Washington opined on the subject of trap limits for the Washington Dungeness crab fisheries, concluding that such limits would have to be rationally related to a legitimate government interest. Historically in District 10 – that part of California's crab fishery south of the tri-state area – there has been a problem of an early season race for crabs that can result in "glutted markets, fishing in unsafe conditions, and the overwhelming of crab processors leading to waste of harvested crab."⁶ This situation is exactly the harm Article IV seeks to prevent.

More importantly, consistent with Article VIII, the California Legislature through Senate Bill 369 (Statutes of 2011, Chapter 335) decided to address these very serious, recurring resource management problems. The 1999 memorandum also noted that any trap limit program must apply equally to vessels operating in federal and adjacent State

¹ See, R.C.W. § 77.75.030 [Washington]; O.R.S. § 507.040 [Oregon]; Fish and Game Code § 14001 [California].

² Eder v. Fish and Game, (2009) 170 Cal. App. 4th 216, 220.

³ *Id.*

⁴ Didier, The Pacific Coast Dungeness Crab Fishery (Pacific States Marine Fisheries Commission: March 2002) at page 2.

⁵ Development of a Buy-Back Program for the Washington Coastal Commercial Crab Fishery (WDFW; January 2007), page 1.

⁶ Eder at 220.

waters and that if a vessel's trap limit was related to a criteria other than state of origin and that criteria applied equally to all vessels, then it would be consistent with the requirement that regulations must apply equally to all vessels. Here, the determining criterion is the amount of landings, which applies equally to all permit holders regardless of their residency status. In determining tier eligibility, the program does not consider any non-California landings, *including those of California fishermen*. Given this consideration, it is difficult to credibly argue that non-resident fishermen are put at an unfair disadvantage.

Finally, I want to correct any misinterpretation of California law. Contrary to your letter, Senate Bill 369 does not grant the Department Director authority to unilaterally change the express statutory requirements governing tier classifications and use of California-only landings data. The program is required to include certain express requirements unless the Director finds there is an industry consensus that modifications are more desirable.⁷ "Consensus" is defined as an affirmative vote of at least 15 of the non-ex officio members of the Dungeness Crab Task Force.⁸ There is no such consensus supporting a modification of the program requirements expressly enumerated in statute. In fact, the reverse is true; the industry overwhelmingly supports these program requirements.⁹

Through the tri-state MOU, our respective agencies agreed to take mutually supportive actions to further the management and maximize the sound economic and biological utilization of the crab resource. Senate Bill 369 encourages such efforts, by directing the Department, the Ocean Protection Council, and the Dungeness Crab Task Force to work with the PSMFC and the Tri-State Dungeness Crab Committee to assess the implications of including District 10 in the tri-state agreement and resolving any issues pertaining to moving the fair start line south to the border of California and Mexico.¹⁰

The Department shares your commitment to working together to find equitable solutions to the problems relating to the west coast Dungeness crab fisheries and looks forward to working with you on these very important fishery management issues.

Sincerely,



Charlton H. Bonham
Director

⁷Fish and Game Code § 8276.5(a).

⁸Fish and Game Code § 8276.5(c).

⁹See, Recommendations from the California Dungeness Crab Task Force regarding management of the fishery in accordance with SB 1690 (March 31, 2010).
http://www.opc.ca.gov/webmaster/ftp/project_pages/dctf/Final_DCTF_LegReport2.pdf.

¹⁰Fish and Game Code § 8276.5(g).

Philip Anderson

April 30, 2012

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