



## ~California Dungeness Crab Task Force~

<http://www.opc.ca.gov/2009/04/dungeness-crab-task-force/>

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TO: California Dungeness Crab Task Force

FROM: Dungeness Crab Task Force Administrative Team

DATE: October 29, 2014

RE: Considerations for Supporting Ongoing DCTF Activities

Attached: California Marketing Orders & Agreements, Councils, and Commissions:  
Comparison of Authorities

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The California Dungeness Crab Task Force (DCTF) is funded by the California Ocean Protection Council (OPC) through January 2017. The current OPC funding cycle began in January 2012, and provides administrative and meeting support to assist the DCTF in fulfilling its legislatively mandated reporting requirements. Once the DCTF's final report is submitted to the legislature on or before January 15, 2017 new funding streams will need to be in place if the DCTF is interested in continuing its role in informing the management of the Dungeness crab fishery and/or other roles identified by the Dungeness crab fishery.

To help move this conversation forward, the OPC has asked the DCTF to begin discussing its long-term vision for the DCTF. This includes identifying the level of interest within the fleet to continue the DCTF (or a comparable body), determining the long-term goal(s) of the DCTF, and generating ideas and recommendations for alternative and reliable funding sources. Additionally, members of the DCTF requested the DCTF Administrative Team (Admin Team) provide the DCTF with a summary of costs associated with DCTF operations in its present form. The Admin Team has fulfilled the DCTF's request, and also compiled information about organization models in place for other California fisheries to help inform DCTF discussions. The Admin Team encourages the DCTF and Dungeness Crab industry to discuss and identify longer-term goals prior to, or parallel with, conducting a full assessment of costs related to ongoing DCTF operations.

The information provided in this document is intended to support DCTF discussions during the October 29, 2014 meeting and beyond, as well as discussions DCTF members will have with their constituents.

### **Continuation of DCTF or Similar Body**

There are number of questions and considerations the Dungeness crab fishery could examine if there is an interest to continuing the DCTF, or a similar body:

- *What would the body like to accomplish?* Examples may include, but are not limited to, serve as a legitimate advisory body to commercial Dungeness crab fishery managers and regulators, fund programs that benefit the commercial fishery (e.g. research programs, gear retrieval programs, etc.), support potential legislation on behalf of the fleet, improve marketing, and/or provide a venue for coordination of commercial fishermen throughout the California coast, continued evaluation of the trap limit program.
- *How do you design an organization and governance structure that would legitimize the group in the eyes of managers, regulators, the fishing fleet, and the broader commercial fishing industry?* For example, it is important to consider how the organization will be set up and managed, how membership will be determined, etc.

- *What aspects of the current DCTF structure, function, operations, would you want to retain? Change?* For example, would in-person meetings take place more/less frequently? Is there be a need to hold port elections? If so, how frequently? How long would the term be for an elected member? Is there a role for alternates? Are there other audiences/interests you would like to see included or excluded in the composition of the body?

### **Current Administration of DCTF**

Currently, the OPC has allocated approximately \$215,000 for 5 years (~\$43,000/year) to support the administration of the DCTF. This budget is used to fund six (6) in-person DCTF meetings, regular email updates to DCTF members, two (2) meeting facilitators, meeting preparation and follow up, coordination and execution of occasional subcommittee conference calls, phone follow up with all DCTF members, coordination and correspondence with relevant contacts (e.g. OPC staff, members of the public, Legislative staff, etc.), report writing, meeting room fees, travel to for two (2) administrative staffers to attend six (6) DCTF meetings, and DCTF member travel reimbursement. The current budget does not take into account overhead for OPC to allocate and administer the funds, or funding of regular member elections, other programs, and research projects.

### **Other Fishery Organization Models**

A variety of fishery organization models are currently employed in California including, but not limited to:

- *Non-profit Organization 501(c)3-* A non-profit organization can be established in a less formal framework and does not require legislation to establish. The funding stream for the organization would rely on voluntary membership fees, donations, or grants from government and private foundations. Operation costs are dependent on the goals of the organization. Examples of a 501(c)3 include the American Albacore Fishing Association (AAFA) and Commercial Fishermen of Santa Barbara (CFSB).
- *California Department of Food and Agriculture (<http://www.cdffa.ca.gov/>)-* There are a wide variety of market orders, councils, and commissions set up through the California Department of Food and Agriculture. Attached is a matrix explaining the difference between the three (3) organizations managed by the Department of Food and Agriculture. Examples of organizations set up through Departments of Food and Agriculture include the California Salmon Council, California Sea Urchin Commission, Oregon Dungeness Crab Commission, Oregon Trawl Commission, etc.
  - *Market Orders-* A market order is set up through the California Marketing Act and is defined as: “an order which is issued by the director...prescribes rules and regulations that govern the processing, distributing, or handling in any manner of any commodity within this state during any specified period.” Marketing orders are the legal rules and regulations that establish Market Advisory Boards, Councils, and Commissions (i.e. marketing organizations) under the California Food and Agriculture Code (FAC 58841). Membership is voluntary; therefore the available budgets of a market order are dependent on the number of members participating.
  - *Marketing Organization (e.g. Council or Commission)-* These organizations require set up through legislation and usually require a minimum of \$150,000/year to function with operating costs varying depending on goals. Marketing organizations provide an organizational structure, operating under government sanction, which allows the industry to solve problems collectively that they could not address individually. Responsibilities of a marketing organization may include advising the fisheries managers, commodity promotion, research, maintenance of quality standards, etc. (FAC 63901-63905). Councils and commissions require a mandatory fee on the industry to fund the program. However, the nature of that fee (e.g. landing tax, permit fee, etc.) is decided as the organization is established.

- *Marketing Associations-* A marketing association is any commercial fishermen's organization established on either a local, county, or statewide level, incorporated in this state, to enable fishermen to collectively negotiate and issue orders and agreements with receivers for the purchase of their catches, or to otherwise engage in activities permitted of agricultural cooperatives (FAC 76540). Typically, marketing organizations (i.e. councils or commissions) and associations operate in close collaboration.

### **Funding Options**

The DCTF may consider a number of potential funding streams (which may be dependent on the organization's legal status) including, but not limited to, fees for number of traps fished (or by fishing tier), landings taxes, voluntary donations, voluntary membership fees, grants, and/or loans from government organizations, private foundations and/or nonprofit organizations. While requiring more discussion, funding may be used to cover organizational costs associated with administrative duties, meetings, conducting elections, member travel, and supporting any other programs or initiatives the organization is interested in supporting.

**CDFA Policies for ... Marketing Orders, Councils, and Agreements (MOCAs)**

<b>Appendix M2</b>			
<b>CALIFORNIA MARKETING ORDERS &amp; AGREEMENTS, COUNCILS, AND COMMISSIONS: COMPARISON OF AUTHORITIES</b>			
	<b>MARKETING ORDER or AGREEMENT</b>	<b>COUNCIL</b>	<b>COMMISSION</b>
<b>This document is a broad summary only. Please refer to the California Marketing Act or the respective council or commission laws for details.</b>			
<b>STATUTORY AUTHORITY FOR CREATION</b>	Under general enabling authority provided in the California Marketing Act of 1937 and implemented administratively by the Department of Food and Agriculture.	Through commodity specific legislation.	Through commodity specific legislation.
<b>SCOPE OF ACTIVITIES</b>	Promotion, advertising, education, production research, quality standards, inspection and supply control.* * No marketing order currently utilizes supply control authority.	Promotion, advertising, education, marketing research, and research. Subject to CDFA's approval, any council may petition to adopt and administer any activity authorized by the California Marketing Act.	Promotion, advertising, education, marketing research, and production research. Subject to CDFA's approval, any commission may petition to adopt and administer any activity authorized by the California Marketing Act.
<b>PROCEDURE TO ESTABLISH</b>	A. Industry prepares preliminary draft of order. B. If deemed appropriate by CDFA, CDFA conducts public hearing. C. CDFA conducts industry vote if hearing testimony demonstrates that proposed marketing order may benefit the industry. D. If industry meets specified voting requirements, CDFA orders the marketing order into effect.	A. Industry drafts proposed statute and seeks approval through legislative process. B. If proposed legislation is enacted, CDFA conducts industry vote. C. If industry meets specified voting requirements, CDFA gives notice of favorable vote and certifies council.	A. Industry drafts proposed statute and seeks approval through legislative process. B. If proposed legislation is enacted, CDFA conducts industry vote. C. If industry meets specified voting requirements, CDFA gives notice of favorable vote and certifies commission.
<b>AMENDMENTS</b>	Major amendments must be developed in the same manner as the original order. CDFA may make minor amendments upon recommendation of a Board <i>only</i> for clarification or administrative purposes.	Same procedure as establishing the original council law. However, an industry vote generally is not required. In general, councils have authority to adopt their own rules and regulations and make minor adjustments without returning to the legislature.	Same procedure as establishing the original commission law. However, an industry vote generally is not required. In general, commissions have authority to adopt their own rules and regulations and make minor adjustments without returning to the legislature.
<b>PROGRAM AUTHORITY AND ROLE OF THE DEPARTMENT</b>	Marketing order and agreements Boards are advisory to CDFA. All actions of an Advisory Board are subject to CDFA's approval.	Councils are advisory to CDFA. All actions of a Council are subject to CDFA's approval.	In general, commissions are not advisory to CDFA. However, CDFA has authority in most cases to issue cease and desist orders in response to commission actions that CDFA deems to be not in the public interest. For many commissions, CDFA must concur with the annual budget and activities statement. CDFA has a non-voting ex-officio member position on most commissions.

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<b>MEMBERSHIP AND SELECTION PROCESS</b>	Advisory Board may consist of producers and handlers, depending upon who is affected, and may have one public member. Industry peers recommend individuals through a nomination process, and CDFA appoints members from among those nominated.	Generally the same as marketing orders and agreements.	Commissions may consist of producers and handlers, depending upon who is affected, and may be required to have one public member that is appointed by CDFA (from nominees recommended by the commission). With exception of one commission, industry members are elected directly by industry peers and are not appointed by CDFA.
<b>CONTINUATION</b>	A public hearing is required at least once every five years. Some marketing orders and agreements have referenda, rather than hearings, to meet the continuation requirement.	In general, an industry hearing is required at least once every five years. However the Dairy Council requires a public hearing at least once every four years, while the Beef Council has no specified periodic re-approval requirement.	Re-approval requirements and intervals vary from commission to commission. In general, an industry vote or hearing is required at least once every five years.
<b>TERMINATION</b>	<p>A. Advisory Board may recommend that a budget and assessment rate not be established, in effect suspending the Board. CDFA may terminate a marketing order after three years if it has received no recommended budget and assessment rate.</p> <p>B. CDFA may conduct a public hearing if it receives a petition supported by at least 25% of producers or handlers that are directly affected and who produce or handle at least 25% of the volume. If questions exist as to the effectiveness of the marketing order, CDFA conducts an industry vote to determine whether the marketing order or agreement shall continue.</p> <p>C. CDFA must terminate a marketing order if it receives a petition supported by at least 51% of producers or handlers that are directly affected and who produce or handle at least 51% of the volume.</p>	<p>In general, councils can be terminated only during the continuation process.</p> <p><b>Note:</b> Termination of the Beef Council shall be submitted to an industry vote if CDFA or the Council determines that the Council is not effective. In addition, producers may petition for a vote of the industry.</p>	<p>Generally as follows:</p> <p>A. By a 2/3 vote, a commission may recommend that CDFA conduct an industry vote for termination.</p> <p>B. CDFA conducts an industry vote for termination if it receives a petition supported by 20% of the affected producers or handlers who account for 20% of the volume.</p> <p>C. CDFA terminates a commission directly if it receives a petition supported by 51% of the affected producers or handlers who account for 51% of the volume.</p>
<b>NON-COMPLIANCE PENALTIES</b>	Criminal and civil	Similar	Similar