



**Staff Recommendation**

December 7, 2021

**California Commercial Dungeness Crab Fishery Habitat Conservation Plan - CEQA compliance analysis**

Noah Ben-Aderet, Ph.D., Sustainable Fisheries and Aquaculture Program Manager

**RECOMMENDED ACTION:** Authorization to disburse up to \$250,000 to the California Department of Fish and Wildlife (CDFW) for partial funding of the California Environmental Quality Act (CEQA) analysis for the Dungeness crab commercial fishery Habitat Conservation Plan.

**LOCATION:** Statewide

**STRATEGIC PLAN GOALS AND OBJECTIVES:**

**Goal 3:** Enhance Coastal and Marine Biodiversity; Objective 3.3: Support Sustainable Marine Fisheries and Thriving Fish and Wildlife Populations

**Goal 4:** Support Ocean Health Through a Sustainable Blue Economy; Objective 4.1: Advance Sustainable Seafood and Thriving Fishing Communities

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**FINDINGS AND RESOLUTION:**

Staff recommends that the Ocean Protection Council (OPC) adopt the following findings:

“Based on the accompanying staff report and attached exhibit(s), OPC hereby finds that:

- 1) The proposed projects are consistent with the purposes of Division 26.5 of the Public Resources Code, the California Ocean Protection Act;
- 2) The proposed projects are consistent with the Budget Act of 2018, which included a \$7.5 million General Fund appropriation to address whale and sea turtle entanglement; and
- 3) The proposed project is not a ‘project’ as defined in the California Environmental Quality Act (CEQA) pursuant to Public Resources Code section, section 21065.”

Staff further recommends that OPC adopt the following resolution pursuant to Sections 35500 *et seq.* of the Public Resources Code:

“OPC hereby approves the disbursement of up to \$250,000 to the California Department of Fish and Wildlife to ensure the Dungeness crab commercial fishery habitat conservation plan complies with the California Environmental Quality Act (CEQA).

This authorization is subject to the condition that prior to disbursement of funds, CDFW shall submit for the review and approval of the Executive Director of the OPC detailed work plans, schedules, staff requirements, budgets, and the names of any contractors intended to be used to complete the projects, as well as discrete deliverables that can be produced in intervals to ensure the projects are on target for successful completion. All projects will be developed under a shared understanding of process, management and delivery.”

### **EXECUTIVE SUMMARY:**

California’s coastal waters include some of the most productive and diverse ecosystems in the world. To conserve this biodiversity and the coastal economies and communities that rely on a healthy ocean, OPC is committed to protecting endangered and threatened whale and sea turtle species as well as supporting thriving commercial and recreational state-managed fisheries. The Strategy for Protecting Whales and Sea Turtles & Ensuring Thriving Fisheries: Reducing the Risk of Entanglement in California Fishing Gear (approved by the OPC in November 2019)<sup>1</sup>, outlines investment priorities to reduce the risk of entanglement in California fishing gear and is one component of a more comprehensive effort to protect whales and sea turtles in California.

The funds requested will support CDFW in their efforts to complete a Conservation Plan for the California commercial Dungeness crab fishery (in support of an upcoming Incidental Take Permit (ITP) application) through funding a portion of the required California Environmental Quality Act (CEQA) analysis. The conservation plan as well as subsequent CEQA analysis is necessary to begin the process of updating the current Risk Assessment and Mitigation Program and to ensure that California continues to minimize entanglement risks while also helping maintain a healthy, sustainable, fishery.

### **PROJECT SUMMARY:**

#### **Background:**

CDFW recently completed an initial drafting of a Conservation Plan (CP) for the California commercial Dungeness crab fishery in support of an upcoming submission of an Incidental Take Permit (ITP) application under Section 10 of the Endangered Species Act (ESA). The draft CP describes a comprehensive strategy to monitor, minimize, and mitigate entanglement of certain ESA-listed whales and sea turtles in commercial Dungeness Crab fishing gear off the coast of California, including an adaptive management approach. The ESA-listed species proposed for coverage under the draft CP and eventual ITP application include humpback whales (*Megaptera novaeangliae*), blue

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<sup>1</sup> [Strategy for Protecting Whales and Sea Turtles](#)

whales (*Balaenoptera musculus*) and Pacific leatherback sea turtles (*Dermochelys coriacea*). The proposed actions by CDFW require CEQA compliance and align with OPC's Strategic Plan target 3.3.5 (under goal 3) to develop a statewide whale and sea turtle protection plan with a target of zero mortality. Assisting with funding the development of the CP will support the goal of reducing entanglement risk in California fishing gear to zero.

The foundation and regulatory framework for the CP is the Risk Assessment Mitigation Program (RAMP), which is used to assess and manage risk of marine life entanglement with fishing gear associated with the commercial Dungeness crab fishery. The RAMP is designed to protect actionable species, (i.e., currently blue whales, humpback whales, and Pacific leatherback sea turtles) and includes definitions, risk assessment activities, a risk assessment schedule, triggers for management actions, adaptive management considerations and actions, mandatory data reporting requirements, and a process for alternative gear requests. The RAMP was added to Section 132.8, Title 14, California Code of Regulations ("CCR") on October 19, 2020 and went into effect on November 1, 2020.

In addition, CDFW has implemented several other measures to address marine life entanglement, including frequent risk assessments during the fishing season in consultation with the California Dungeness Crab Fishing Gear Working Group (Working Group), development of a best practices guide in partnership with the Working Group, implementation of a standardized gear marking program for trap gear fisheries, support of alternative gear testing, implementation of a regulation limiting traps tethered to surface gear, and implementation of a lost or abandoned commercial Dungeness crab trap program. Complimenting the foundational RAMP regulation, these efforts provide additional measures to minimize the risk of entanglements while also minimizing impacts to the fleet and supporting a sustainable, robust Dungeness crab fishery.

CDFW is currently developing a scope of work with Ascent Environmental, who will then prepare an Environmental Impact Report (EIR) to analyze reasonably foreseeable physical changes that would occur with implementation of the proposed CP, regulatory changes, and Initial Assessment to carry out a federal incidental take authorization. Ascent Environmental will assist CDFW with CEQA compliance requirements by completing the EIR, preparing related notices and CEQA documents, and processing the CEQA environmental review of the proposed actions. CDFW will be the lead agency under CEQA and will consider certification of the EIR.

**Project Summary:**

This project will accomplish the following objectives:

- Adoption and implementation of the Conservation Plan
- Determine regulatory changes needed to implement the CP and its adaptive approach

- Approval of an Implementing Agreement (IA) with the National Marine Fisheries Service (NMFS) to issue implement an ITP (following completion of National Environmental Policy Act compliance by NMFS).

**About the California Department of Fish and Wildlife:**

CDFW’s mission is to manage California’s diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public. Within CDFW, the Marine Region is responsible for fisheries and habitat management, environmental review, and water quality monitoring statewide. Among their responsibilities is managing California’s commercial marine fisheries as well as interactions with protected species. CDFW and its other state and federal partner agencies (including OPC) continue to work towards development of management measures that not only reduce entanglement impacts to listed species, but also minimize impacts to the fleet and support a sustainable, robust fishery.

**Project Timeline**

- January 2022 - Contract Start
- Spring/Summer 2022 – Draft CEQA Analysis
- Summer/Fall 2022 – CEQA Public meeting(s)
- Winter 2022/23 – Final CEQA drafting
- Spring 2023 – CEQA Analysis complete
- Submit with final RAMP regulatory package update

**PROJECT FINANCING:**

Staff recommends that the Ocean Protection Council (OPC) authorize encumbrance of up to \$250,000 to CDFW to fund a portion of the CEQA analysis necessary for the drafting of a Conservation Plan for the California commercial Dungeness crab fishery.

CDFW contribution	\$306,161.00
OPC contribution	\$250,000.00
<b>TOTAL project cost</b>	<b>\$556,161.00</b>

The anticipated source of funds will be from the Ocean Protection Council’s General Fund appropriation from the 2018 Budget Act, which included \$7.5 million for whale and sea turtle entanglement.<sup>2</sup>

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<sup>2</sup> [2018 Budget Act](#)

**CONSISTENCY WITH CALIFORNIA OCEAN PROTECTION ACT:**

The proposed project is consistent with the Ocean Protection Act, Division 26.5 of the Public Resources Code, because it is consistent with trust-fund allowable projects, defined in Public Resources Code Section 35650(b)(2) as projects which:

- Eliminate or reduce threats to coastal and ocean ecosystems, habitats, and species.
- Improve the management of fisheries and/or foster sustainable fisheries.
- Improve management, conservation, and protection of coastal waters and ocean ecosystems.
- Provide monitoring and scientific data to improve state efforts to protect and conserve ocean resources.
- Protect, conserve, and restore coastal waters and ocean ecosystems.

**COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):**

The proposed project is not a 'project' as defined in the California Environmental Quality Act (CEQA) pursuant to Public Resources Code section, section 21065 because the project funds a CEQA analysis for the Dungeness crab commercial fishery Habitat Conservation Plan.