STATE OF WASHINGTON
Department of Fish and Wildlife
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March 30, 2012

Charlton H. Bonham, Director
California Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, California 95814

Re: Implementation of California's Coastal Dungeness Crab Pot Limit System

Dear Director Bonham,

I am writing to express concern regarding California's implementation of a pot limit system for the coastal Dungeness crab fishery in the territorial waters and Exclusive Economic Zone adjacent to your state. Specifically, Washington State is concerned about the default protocol for assigning the seven tiers of pot limits called for under Senate Bill 369 (SB 369). Our concern stems from the major difference between how we treated California license holders and landings and how this proposal treats landings made by Washington license holders. As I read SB 369, the pot limit assignments will be made based solely upon the amount of crab a harvester landed into California during the qualifying period. This approach stands in sharp contrast to the approach used by Washington and Oregon when they implemented pot limit systems for the coastal Dungeness crab fishery based upon coast wide landings.

To put Washington's concern into some perspective, it may be useful to review the history of state and federal regulation for coastal fisheries and state regulation of the coastal Dungeness crab fishery in particular.

In 1976, Congress enacted the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), "to conserve and manage the fishery resources found off the coasts of the United States." 16 U.S.C. § 1801(b)(1). Fundamentally, the United States claimed "sovereign rights and exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, (including Dungeness crab) within the exclusive economic zone [EEZ]." Despite this broad assertion of federal jurisdiction over fishery resources, state authority over those resources was preserved in several ways. States are able to regulate harvest vessels operating in the territorial waters within three miles of their coastline and are also allowed to regulate harvest vessels that may be operating within the EEZ if those vessels are registered under the laws of that state (and provided that there is no federal fishery management plan (FMP) for that fishery or the state regulation is consistent with the federal FMP).

The Pacific Fishery Management Council has considered on two occasions developing a management plan for Dungeness crab, but in both instances, the Council chose to leave the management of this fishery in the hands of the state. As a result, there has never been a federal FMP for the coastal Dungeness crab fishery and the coastal states have enjoyed the ability to regulate this fishery on their own. Generally speaking, state regulations have been undertaken in a consistent and coordinated manner based upon what has been called the Tri-State management planning process. However, our ability to effectively manage the fishery was frustrated by the limitation on our authority to regulate only vessels registered to our respective states in adjacent EEZ waters. To address that issue, the leadership from all three states coupled with a unified and strong voice from the industry from each state lobbied for special regulatory authority over the coastal Dungeness crab fishery.

In 1996, Congress enacted the Dungeness Crab Act as an addendum to the state authority provisions of the Magnuson-Stevens Act. The Crab Act provides limited interim authority for the three States to enforce certain State regulations against all vessels operating in the exclusive economic zone while fishing for Dungeness crab. It was originally enacted for a limited time period and has since been re-enacted several times, each time with an expiration date. The current interim authority is set to expire in September of 2016. Obtaining this special authority was no easy feat. It was accomplished in large part due to the recognition that the coastal states were managing this fishery in a coordinated and generally equal manner. Indeed, the Crab Act contains provisions designed to ensure that state regulations are applied equally in both the territorial and EEZ coastal waters and without regard to a regulated vessel's state of origin.

The three coastal states, both managers and industry representatives, have continued to work together and have generally adopted regulations based upon consultation and consideration of coastal issues aired through the Tri-State process. This process of consultation and coordination has always recognized the importance of having coastal states approach the Dungeness crab fishery in a coordinated manner, and with consideration for the principle that regulations should not differentiate between vessels based upon their state of origin. That approach is reflected in Washington's 2001 adoption of pot limits that were assigned based upon a vessel's coast wide landings rather than landings made in Washington alone. Similarly, when Oregon adopted its pot limit system in 2006, assignments were made considering coast wide landings rather than Oregon landings alone.

In our view, California's default pot limit assignment protocol, set to be implemented in 2013, reflects a serious departure from the coordinated approach to coastal Dungeness crab regulation. The consideration of only California landings also seems to be based upon a desire to differentiate between the activities of boats that, while licensed in California, possess licenses in other coastal states and may have a home port outside of California in which they historically landed some or all of their catch. Assigning a pot limit to these vessels based upon only their California landings would ignore their history of coast wide operations and would likely produce smaller pot limits than the pot limits assigned to their fellow harvesters who operated in the coastal fishery but chose to land only in California. Accordingly, California-licensed vessels of comparable size and comparable coast wide operations with a California port of call would likely

be regulated by California's pot limit assignment in a manner that placed boats with a port of call outside California at a disadvantage.

In addition, to working together to gain the special regulatory authorities provided to the states under the Crab Act, each state has enacted state regulations that facilitate the effective implementation of our independent state license limitation systems. We commonly refer to this action as Limited Entry 200 or LE 200. Under this cooperative approach, we have each placed geographic limitations on the area where our respective licenses are valid. The combination of this action coupled with the Crab Act provisions and the Tri-State management process has greatly improved our collective ability to manage this important fishery. It would be a serious step backward to undermine all that we have achieved together by deviating from this cooperative approach that has resulted in the equitable treatment of the license holders from the three states.

I am aware that California Senate Bill 369 provides you, as the Director, with authority to work with the California Dungeness crab task force to consider and work towards consensus on an alternative pot limit assignment protocol prior to the March 31, 2013 date for implementation. In the spirit of our past work together within the Tri-State process, I am urging reconsideration of the default pot limit protocol that considers only California landings. Greater consideration should be given to the development of a pot limit assignment protocol that reflects the equity of license holders that is part of the Oregon and Washington pot limit systems.

We are prepared to work together with California and the state of Oregon on an alternative that meets California's needs and that remains consistent with the history of state regulation of this important coastal fishery. A continued commitment to work together on this basis will demonstrate to Congress that the regulatory environment that existed when the Crab Act was first authorized remains alive and well on the Pacific Coast.

Thank you for your consideration of my request and I look forward to discussing this important issue with you at a time that is convenient with your schedule.

Sincerely,

Philip Anderson
Director

cc: Roy Elicker, ODFW
Steve Williams, ODFW
Marija Vojkovich, CDFG
California Ocean Protection Council Dungeness Crab Task Force