

Memorandum

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TO: THE CALIFORNIA DUNGENESS CRAB TASK FORCE
FROM: Thane W. Tienson, Attorney for the Washington Dungeness Crab
Fishermen's Association
DATE: March 12, 2012
RE: **COMMENTS RE THE FAIRNESS AND VALIDITY OF SENATE BILL 369**

Mr. Chair and other Members of the California Dungeness Crab Task Force, thank you for the opportunity to address you today. My name is Thane Tienson, and I am submitting these comments on behalf of the Washington Dungeness Crab Fishermen's Association, including a number of non-resident California permit holders, to express grave concern about the fairness, propriety, and legality of the crab trap limit established in SB 369 and the process that was followed in adopting it.

The Dungeness crab fishery that existed a generation ago throughout the West Coast was a local fishery. Crab fishermen lived and fished near their local communities and the crab market itself was largely a local one. That is no longer true. Today's Dungeness crab fishery is very much a tri-state fishery, with a global market. Permit holders in each state's fishery, California, Oregon, and Washington, come from all three states. Non-residents form a significant contingent of each state's fishery.

California, like Oregon and Washington, allows non-residents to buy a Dungeness crab permit. The state collects a significantly higher fee from those non-resident permit holders who have chosen to invest in the California crab fishery. Many participants in the fishery hold

permits in two or three states. Crab is often harvested in the waters of one state and landed in another, especially in the waters near the state's borders.

The Dungeness crab fishery, while still subject to state regulation, is also regulated under the federal Magnuson-Stevens Act. There are also tri-state commissions that help promote fairness and coordinated interstate management of the fishery: the Tri-State Dungeness Crab Commission and the Pacific States Marine Fisheries Commission.

Recognizing the tri-state nature of the fishery, both Oregon and Washington, in earlier adopting their crab trap limit schemes, decided that landings of crab made in all three states should be considered in determining the number of traps or pots a permit holder could fish in that state's fishery. Many California residents with Oregon or Washington permits benefited from those decisions. It was for that reason that California's decision to limit the landings considered in establishing crab trap limits to California landings only was so shocking.

It was all the more surprising because the legislation creating the task force to devise a crab trap limit law said nothing about restricting landings to California only. That legislation also called for at least one representative of out-of-state residents to be a part of the task force. As it turned out there was no non-resident permit holder on the task force and reportedly limited effort made to advocate for non-resident permit holders.

One is forced to conclude that the decision to punish those California permit holders with out-of-state landings was motivated purely and simply by economic protectionism.

Indeed, press coverage of the Bill's passage acknowledged the legislation's intent. The Bill "will prevent large boats coming from out-of-state from crowding out California fishermen."

The sex, size, and season limits that govern the fishery assure there are no conservation concerns. SB 369 was not trying to address overfishing. Instead, this legislation was very deliberately designed to try and limit the California Dungeness crab fishery to Californians only. That is not only unfair and completely inconsistent with what Oregon and Washington did in creating their own crab trap limit laws, it is illegal and will be challenged if not changed.

There are other reasons the law is unfair, some that affect California resident permit holders as well. For one thing, the landings period selected to determine a permit holder's trap limit tier includes the 2007 season in which the M/V Cosco Busan oil spill at the Oakland Bay Bridge forced a delay in the season opening --a delay that limited and in some instances prevented landings for that year.. That is unfair.

There is a solution to remedy this inequity and it is an easy one. I urge you to revise the law to allow permit holders to have all their tri-state landings considered, as Oregon and Washington both have done. You need not reduce trap limits for anyone -- simply allow those permit holders with out-of-state landings, largely non-residents, to have all of their landings considered.

/jz

