



California Department of Fish and Wildlife  
Notice of Preparation of a Draft Environmental Impact Report  
and Notice of Public Scoping Meeting:  
Conservation Plan for the  
California Commercial Dungeness Crab Fishery

**Date:** September 19, 2022

**To:** Responsible Agencies, Trustee Agencies, and Interested Persons

**From:** California Department of Fish and Wildlife

**RE:** Notice of Preparation of a Draft Environmental Impact Report: Conservation Plan for the California Commercial Dungeness Crab Fishery and Notice of Public Scoping Meeting

In accordance with the provisions of the California Environmental Quality Act (CEQA), the California Department of Fish and Wildlife (CDFW) has determined that the proposed Conservation Plan (CP) for the California Commercial Dungeness Crab Fishery and related regulatory actions will require preparation of an Environmental Impact Report (EIR). CDFW is seeking an incidental take permit (ITP) under Section 10 of the federal Endangered Species Act (ESA) for humpback whale (Central America Distinct Population Segment [DPS] and Mexico DPS), blue whale, and Pacific leatherback sea turtle (“Covered Species”) to provide authorization of limited incidental take of Covered Species by the California commercial Dungeness crab fishery. CDFW is proposing to adopt and implement a CP, make regulatory changes to implement the CP, and approve an implementing agreement with the National Marine Fisheries Service (NMFS) to support issuance of the ITP. Together, these CDFW actions comprise the whole of the project subject to CEQA compliance. The reasonably foreseeable compliance responses to implement these actions are the sources of potential physical changes to the environment that will be reviewed in the EIR.

The purpose of this Notice of Preparation (NOP) is to provide an opportunity for the public, interested parties and public agencies to comment on the scope and proposed content of the EIR. This NOP initiates the CEQA scoping process. Documents related to this EIR will be available for review on CDFW’s website at: <https://wildlife.ca.gov/Notices>

**NOP Public Comment Period: September 19, 2022 to October 18, 2022**

## 1 PROJECT BACKGROUND

Entanglement of large whales and sea turtles in fishing gear off the West Coast has been increasing in recent years (Saez et al. 2021). Blue whales (*Balaenoptera musculus*), and certain distinct population segments (DPS) of humpback whales (*Megaptera novaeangliae*), gray whales (*Eschrichtius robustus*), and killer whales (*Orcinus orca*), as well as Pacific leatherback sea turtles (*Dermochelys coriacea*) are protected under the ESA throughout their range. Trap gear from the California, Oregon, Washington, and tribal commercial Dungeness crab fisheries are known to cause entanglements with ESA-listed blue whales, certain DPS of humpback whales and gray whales, and Pacific leatherback sea turtles (Saez et al. 2021). Off the California coast, Entanglements with trap gear from the California commercial Dungeness crab fishery of humpback whales of the Central America DPS and Mexico DPS and grey whales of the Eastern North Pacific DPS are known to occur. While both DPS of humpback whales are ESA-listed species, the Eastern North Pacific DPS of gray whales was de-listed in 1994. Trap gear from the Oregon and Washington commercial Dungeness crab fisheries are also known to interact with certain DPS of killer whales (Saez et al. 2021); however, there is no evidence trap gear from the

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California commercial Dungeness crab fishery causing entanglements with killer whales. Therefore, species of primary concern for entanglement in trap gear from the California commercial Dungeness crab fishery include blue whales, the Central America DPS and Mexico DPS of humpback whales, and Pacific leatherback sea turtles.

Primary management authority for the commercial Dungeness crab fishery rests with the California State Legislature, which has enacted several statutes governing fishing activity. Statutes (codified in Fish and Game Code [FGC]) and CDFW regulations (codified in Title 14 of the California Code of Regulations [14 CCR]) jointly provide the management framework for this fishery. Under current regulations, the CDFW Director's authority to restrict the commercial Dungeness crab fishery is limited to protecting human health (FGC Section 5523), reducing risk of marine life entanglement (FGC Section 8276.1(c) and 14 CCR Section 132.8), and avoiding low crab quality (FGC Section 8276.2). FGC Section 8276.1(b) requires CDFW, in consultation with the California Dungeness Crab Fishing Gear Working Group (Working Group) and other stakeholders, to adopt regulations establishing criteria and protocols to evaluate and respond to potential risk of marine life entanglement from the recreational and commercial Dungeness crab fisheries. The Working Group was convened by CDFW in September 2015 in partnership with the California Ocean Protection Council (OPC) and NMFS. The Working Group consists of commercial and recreational fishing representatives, environmental organization representatives, members of the disentangle network, and state and federal agencies.

CDFW adopted regulations (14 CCR Section 132.8) that became effective on November 1, 2020, and established a risk assessment mitigation program (RAMP) for the commercial Dungeness crab fishery to protect actionable species—blue whales, humpback whales, and Pacific leatherback sea turtles. These regulations began governing fishing operations with the 2020-2021 fishing season and form the regulatory foundation of the proposed CP. As defined in regulation and further described below, the RAMP is a dynamic management framework that: establishes thresholds for determining if entanglement risk is elevated; specifies potential management actions; and requires use of the best available science when determining appropriate management actions by the CDFW Director. Under the *2018 Marine Life Management Act Master Plan*, CDFW has defined best available science as relevant, inclusive, objective, open, and timely scientific information (CDFW 2018). Under the RAMP, the Director is required to conduct a risk assessment at least monthly between November and the end of the fishing season and consider Working Group recommendations regarding appropriate management measures prior to implementation. The Working Group plays a role in the RAMP implementation by recommending management actions to the CDFW Director based on the Working Group members' relevant expertise.

In addition to the risk assessment and management action elements of the RAMP, 14 CCR Section 132.8 also contains provisions that relate to available data under subsection (d) and management actions under subsection (e). Subsection (g) specifies additional reporting requirements for all fishery participants. Subsection (h) establishes a process for CDFW certification of Alternative Gear. Collectively, the requirements and processes of each subsection in 14 CCR Section 132.8 constitute the RAMP. Enforcement of the RAMP falls primarily under the responsibility of CDFW's Law Enforcement Division. CDFW Officers are responsible for ensuring compliance with various management measures implemented under the RAMP, including time/area closures, vertical line reductions, and gear modifications. CDFW also receives law enforcement support from the United States (US) Coast Guard and NMFS Office of Law Enforcement.

Revisions to the RAMP are proposed as part of implementation of the CP and are discussed in Section 3.3 below.

## 2 PROJECT LOCATION

The project location (referred to henceforth as “project area”) encompasses the entirety of the US Exclusive Economic Zone (EEZ) from the California/Oregon border in the north to the California/Mexico border in the south (Figures 1 and 2). Although the commercial Dungeness crab fishery occurs almost exclusively north of Point Conception (CDFW 2020), CDFW jurisdiction over the fishery extends throughout the entire EEZ off California’s coast (16 U.S. Code Section 1856 note).

## 3 PROJECT DESCRIPTION

To support its application for an ITP under Section 10 of the ESA, CDFW has prepared a draft CP to monitor, minimize, and mitigate entanglements of specific ESA-listed whales and sea turtles (“Covered Species”) in commercial Dungeness crab fishing gear off the coast of California. On December 1, 2021, CDFW released an updated draft CP for a 45-day public comment period (<https://wildlife.ca.gov/Conservation/Marine/Whale-Safe-Fisheries#55999898-conservation-plan>). In addition, CDFW is proposing to revise 14 CCR Section 132.8, the RAMP for the commercial Dungeness crab fishery to protect Covered Species. The revisions include a risk assessment schedule, revisions to triggers for management action, updates to categories of management considerations, and general updates for the process for notification of management actions, mandatory data reporting requirements, and a process for alternative gear authorization. Finally, CDFW is requesting a renewable ITP with allowable take levels for Covered Species. Covered Species are proposed to include the following ESA-listed species: blue whales, the Central America DPS and Mexico DPS of humpback whales, and Pacific leatherback sea turtles.

### 3.1 PROJECT OBJECTIVES

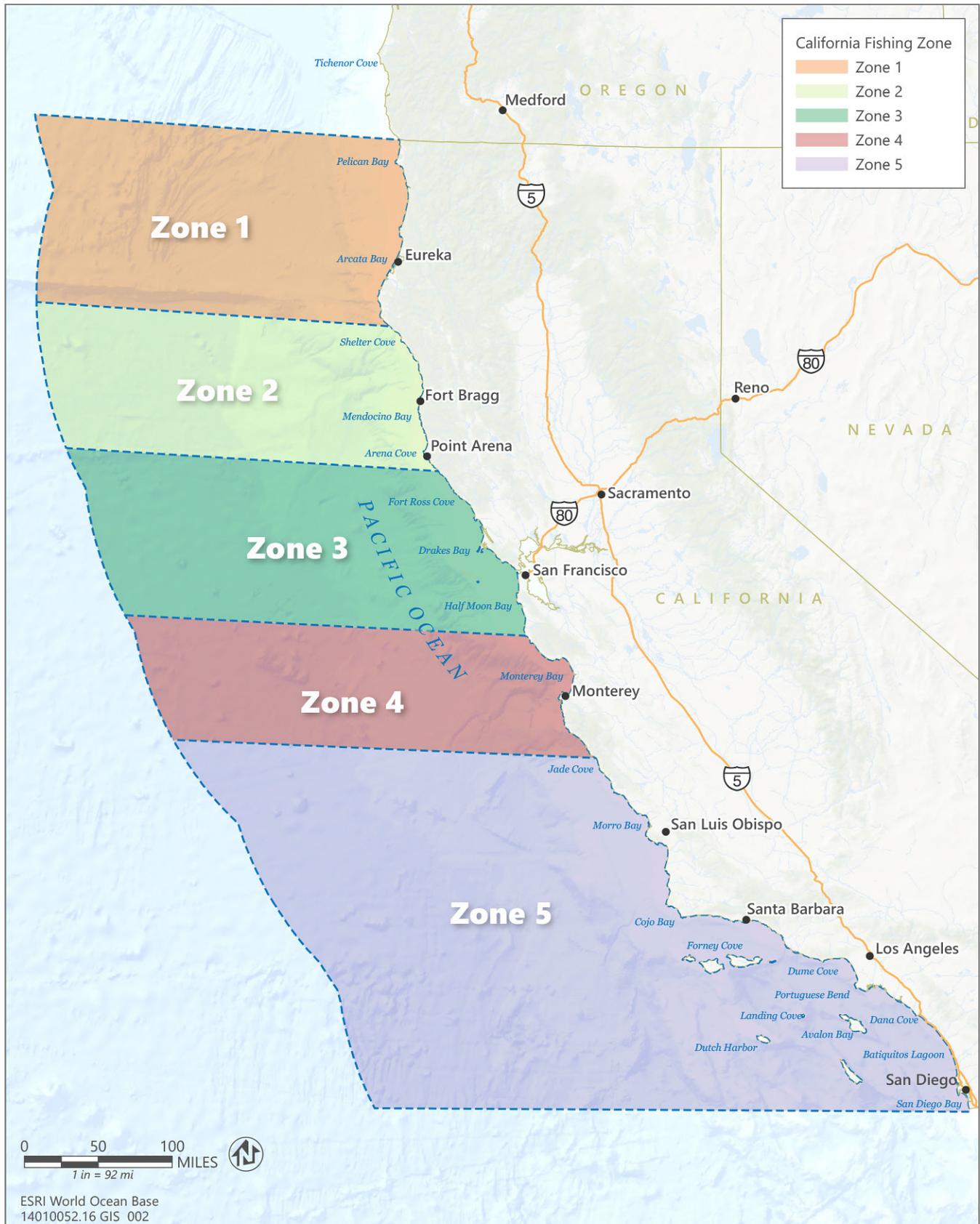
The goal of the project is to reduce take of Covered Species by the commercial Dungeness crab fishery to the maximum extent practicable by minimizing co-occurrence between Covered Species and commercial Dungeness crab trap gear across the project area. Specific objectives are to:

- ▶ minimize humpback whale, blue whale, and Pacific leatherback sea turtle entanglement risk from the commercial Dungeness crab fishery by restricting presence of actively fished vertical lines;
- ▶ reduce co-occurrence of humpback whale, blue whale, and Pacific leatherback sea turtle with lost or abandoned California commercial Dungeness crab gear throughout the project area;
- ▶ develop, evaluate, and require use of gear modifications which reduce severity if humpback or blue whales become entangled in commercial Dungeness crab gear; and
- ▶ support rapid entanglement response efforts which minimize the severity of large whale entanglements in gear from the commercial Dungeness crab gear.



Source: adapted by Ascent Environmental in 2022

Figure 1 Project Area



Source: adapted by Ascent Environmental in 2022.

Figure 2 California Fishing Zones

## **3.2 CONSERVATION PLAN**

The CP describes a comprehensive strategy to monitor, minimize, and mitigate entanglements of blue whales, the Central America DPS and Mexico DPS of humpback whales, and Pacific leatherback sea turtles in commercial Dungeness crab fishing gear off the coast of California. Covered Activities addressed in the CP include activities associated with the existing commercial Dungeness crab fishery and are related to habitat consideration, gear configuration, fishing vessel permits and trap limits, monitoring of landing receipts, trap estimates, location of catch, fishery management areas and timing, and spatial trends in fishing activity. Specific Conservation Measures to reduce take of Covered Species in the CP include triggers for implementing management actions as part of the revised RAMP, implementation of best management practices, and implementation of a lost or abandoned commercial Dungeness crab trap gear retrieval program, as summarized below.

### **3.2.1 Triggers for Management Actions under the RAMP**

The most protective management response CDFW can implement to prevent entanglements is a fishery closure where part or all of the project area is closed to commercial Dungeness crab trap gear. Therefore, the default action when a trigger is reached would be closure of one or more Fishing Zone(s) to traditional commercial Dungeness crab gear. However, the Director may select from alternatives based on the best available science related to the management considerations. Under the revised RAMP, management actions will be limited to prohibiting surface gear, depth constraints, vertical line/gear reductions, closure or delay of one or more Fishing Zone(s), and use of Alternative Gear (14 CCR Section 132.8 subd. (e)). Having a bounded range of options allows management responses to be both flexible and predictable. Should the best available science be insufficient to support alternative management responses, the default of a partial or statewide closure of the project area should provide a protective threshold to minimize entanglement risk.

### **3.2.2 Best Practices**

In addition to the RAMP, the CP includes best practices to reduce take of Covered Species. Gear modifications that are likely to reduce entanglement severity are currently being evaluated or recommended for widespread use as best practices. The first Best Practices Guide for Minimizing Marine Life Entanglement was developed in fall 2015 and it was last updated in fall 2021 by the Working Group, with input and support from OPC, NMFS, and CDFW. The Best Practices Guide would continue to be updated on an as needed basis to incorporate new recommendations from the Working Group, Working Group Advisors, and agencies.

### **3.2.3 Retrieval of Lost or Abandoned Gear**

The CP also includes regulatory updates to 14 CCR Section 132.8 addressing retrieval of lost or abandoned gear. CDFW adopted 14 CCR Section 132.7 in September 2019 implementing a lost or abandoned commercial Dungeness crab trap gear retrieval program. Under the terms of the program, qualified entities work with commercial trap fishermen to conduct on-the-water retrieval operations starting 15 calendar days after the scheduled season closure (FGC Section 8276) and continuing until September 30. Compensation for retrieval activities is provided either by the Dungeness crab vessel permit holder, in exchange for the retrieved trap, or by CDFW. Revisions to 14 CCR Section 132.8 would require Dungeness crab permit holders to include the number of lost traps in their bi-weekly Fishing Activity Reports.

### 3.3 PROPOSED REGULATORY CHANGES

The proposed regulation revises Section 132.8, Title 14, CCR to update the RAMP. The revisions proposed in Section 132.8 would do the following:

- ▶ Expand the extent of Fishing Zone 5 to include Pt. Conception to the US/Mexico Border (currently Fishing Zone 6).
- ▶ Revise management action triggers and considerations to be based on confirmed numbers of entanglements of a particular actionable species weighted by whether the confirmed entanglement was in California commercial Dungeness crab gear or unknown fishing gear.
- ▶ Clarify survey data to be used for assessing concentrations of actionable species in a fishing zone and how long to delay the fishing season if current survey data are unavailable.
- ▶ Revise management actions to eliminate use of fleet advisory notices encouraging voluntary efforts and/or measures to reduce risk of entanglements as a management action; authorize the Director to prohibit use of surface gear, except the main buoy during the fishing season within any of the fishing zones; and authorize the Director to prohibit commercial take or possession of Dungeness crab within any fishing zone or delay opening of the commercial Dungeness crab fishing season.
- ▶ Update how Dungeness crab permit holders submit bi-weekly reports to CDFW.
- ▶ Revise the deadlines when all CA commercial Dungeness crab fishing vessels are required to install an electronic system to monitor the location and movement of vessels; use hydraulic gear sensors to indicate fishing activity; and automatically transmit all location and fishing activity data to CDFW or an authorized agent.
- ▶ Define other conditions by which alternative gear may be authorized and require that the current list of authorized alternative gear include any conditions on use of the alternative gear.
- ▶ Define the information that must be included in bi-weekly fishing activity reports submitted to CDFW.
- ▶ Specify that it is unlawful to violate any restriction or fail to comply with any requirement of Section 132.8.

### 3.4 INCIDENTAL TAKE PERMIT

CDFW is requesting a 21-year term renewable ITP with the following allowable take levels of Covered Species by the California commercial Dungeness crab fishery: up to nine humpback whales every 3 years, up to one blue whale every 3 years, and up to one Pacific leatherback sea turtle every 10 years. Over the proposed ITP 21-year term, this would equate to a total of 63 humpback whales, seven blue whales, and two Pacific leatherback sea turtles. For purposes of determining whether these take thresholds have been reached, CDFW would also consider every two confirmed entanglements in Unknown Fishing Gear to constitute take of a single individual by the California commercial Dungeness crab fishery.

Based on initial consultation with NMFS during preparation of the CP, the proposed 21-year ITP duration would allow the ITP term to align with required Marine Mammal Protection Act authorizations that must occur every 3 years; provide sufficient time to implement the CP; and provide a measure of predictability for fishery participants.

## 4 POTENTIAL ENVIRONMENTAL EFFECTS

CDFW has determined based on preliminary review, in accordance with Section 15060 of the CEQA Guidelines, that an EIR should be prepared. As required by CEQA, the EIR will describe existing conditions and evaluate the potential environmental effects of the project and a reasonable range of alternatives, including the no-project alternative. It will address direct, indirect, and cumulative effects. The EIR will also discuss potential growth-inducing impacts and summarize significant and unavoidable environmental effects. The EIR will identify feasible mitigation measures, if available, to reduce potentially significant impacts. At this time, CDFW has identified a potential for environmental effects in the areas identified below.

**Air Quality.** Implementation of the project is not expected to result in construction-related emissions. The EIR will evaluate the potential for implementation of the CP and ITP to change operation-related emissions associated with the commercial Dungeness crab fishery.

**Marine Biological Resources.** Special-status wildlife species could potentially occur within the project area including Covered Species. Implementation of the project could result in disturbance of special-status species or their habitat. These issues will be evaluated in the EIR.

**Cultural Resources and Tribal Cultural Resources.** Any tribal or other cultural resources that are known or have the potential to occur in the project area will be assessed, and the potential impacts that may occur to known and unanticipated resources because of project implementation will be evaluated. The EIR will document the results of AB 52 consultation with Native American tribes and any agreements on mitigation measures for protection of California Tribal Cultural Resources.

**Greenhouse Gases and Climate Change.** This section will assess the potential for operation-related greenhouse gas emissions associated with changes to the commercial Dungeness crab fishery as a result of the CP and ITP. In addition, this section will qualitatively discuss potential climate change influences on the Dungeness crab fishery and whether those influences could alter the environmental impacts of implementing the CP and ITP.

**Hazards and Hazardous Materials.** This section will assess the potential for operation-related impacts related to hazards and hazardous materials due to changes in the commercial Dungeness crab fishery as a result of the CP and ITP.

**Water Quality.** This section will assess the potential for operation-related impacts to water quality including short-term and long-term water quality effects as a result of implementation of the CP and ITP.

## 5 PUBLIC SCOPING MEETING

CDFW will conduct a public scoping meeting on October 4, 2022, at 3:30 p.m. to inform interested parties about the project, and to provide agencies and the public with an opportunity to provide comments on the scope and content of the EIR.

The public scoping meeting will be held virtually via Zoom webinar. Participants must register in advance at the following link: [https://us06web.zoom.us/webinar/register/WN\\_7zcaPdLbQyiyXT48G8ntg](https://us06web.zoom.us/webinar/register/WN_7zcaPdLbQyiyXT48G8ntg). After registering, participants will receive the meeting link via email to log into the webinar on October 4, 2022.

## 6 PROVIDING COMMENTS ON THIS NOTICE OF PREPARATION

Written comments on the NOP should be provided no later than 5:00 p.m. on October 18, 2022. Please send all comments to:

California Department of Fish and Wildlife  
Attn: Ryan Bartling  
3637 Westwind Blvd  
Santa Rosa, CA 95403

Or via E-mail: [Whalesafefisheries@wildlife.ca.gov](mailto:Whalesafefisheries@wildlife.ca.gov) (include "Conservation Plan – NOP Comments" in subject line)

If you are from an agency that will need to consider the EIR when deciding whether to issue permits or other approvals for the project, please provide the name of a contact person. Comments provided by email should include the name and mailing address of the commenter in the body of the email.

### 6.1 FOCUS OF INPUT

CDFW will rely on responsible and trustee agencies to provide information relevant to the analysis of resources within their jurisdiction. CDFW encourages input on the scope and content of the EIR, with a focus on the following topics:

- ▶ **Scope of Environmental Analysis.** Guidance on the scope of analysis for this EIR, including identification of specific issues that will require closer study due to the location, scale, and character of the CP and issuance of an ITP;
- ▶ **Mitigation Measures.** Ideas for feasible mitigation, including mitigation that could potentially be imposed by CDFW and that would avoid, eliminate, or reduce potentially significant or significant impacts;
- ▶ **Alternatives.** Suggestions for alternatives to the CP and ITP that could potentially reduce or avoid potentially significant or significant impacts; and
- ▶ **Interested Parties.** Identification of public agencies, public and private groups, and individuals that CDFW should notice regarding this project and the accompanying EIR.

## 7 REFERENCES

California Department of Fish and Wildlife. 2018 (February). *2018 Master Plan for Fisheries A Guide for Implementation of the Marine Life Management Act*. Available at: <https://wildlife.ca.gov/Conservation/Marine/MLMA/Master-Plan>. Accessed August 11, 2022.

———. 2020. Dungeness Crab, *Metacarcinus magister*, Enhanced Status Report.

CDFW. See California Department of Fish and Wildlife.

Saez L, Lawson D, DeAngelis M. 2021. Large whale entanglements off the U.S. West Coast, from 1982-2017. NOAA Technical Memorandum NMFS-OPR-63A. 50 p.

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