

# DUNGIE DEAL

**In a settlement over whale entanglement, California's Dungeness crab fishermen lose the spring season**

By Nick Rahaim

**T**he worst-case scenario has been averted — no multiyear closure of California's Dungeness crab fishery. But fishermen will feel the sting for years to come after a settlement in a lawsuit over whale and sea turtle entanglements has closed spring crabbing in the state for the foreseeable future. And the fishermen are not happy.

"The settlement is going to be extremely painful and extremely difficult to deal with," said Noah Oppenheim, executive director of the Pacific Coast Federation of Fishermen's Associations, noting that millions of dollars in product will be left in the water this year. "But this was the best possible deal that was acceptable to all parties."

At issue is a 2017 lawsuit in federal court by the Oakland, Calif.-based Center for Biological Diversity that argued the state of California was in violation of the Endangered Species Act after a three-year spike in whale entanglements in Dungeness crab fishing gear from 2014 to 2017.

The lawsuit sought to force the state of California to obtain a federal incidental take permit for whales and turtles — a process that takes around three years to implement. It would have been possible for the fishery to remain closed during the intervening years, although the CBD says it never sought an indefinite closure through litigation.

In 2015, 50 whales, including humpback, gray and blue whales, were confirmed to have become entangled in fishing gear, up from an average of less than 10 annual entanglements in the 15 years prior. In 2016, the number of entanglements remained high at 48 confirmed whale entanglements. Numbers in 2017 were down, but still above

historical norms, with 31 confirmed entanglements on the West Coast.

A preliminary report for 2018 from NOAA stated there were 45 confirmed whale entanglements. Seven of the 2018 entanglements were tied to California Dungeness crab gear.

Many Dungeness crab fishermen are quick to point out that, while a problem they are working hard to resolve, the majority of confirmed entanglements do not involve crab gear.

"Dungeness crab fishermen have been singled out," said Benjamin Platt, 57, a fisherman out of Crescent City and Bodega Bay. "The shipping industry kills more than a dozen whales a year by their own admission, but where's the outrage there?"

When whale entanglements first spiked, a group of diverse stakeholders convened to create the California Dungeness Crab Fishing Gear Working Group in September 2015. The working group consists of commercial fishermen, the California Department of Fish and Wildlife, state and federal agencies, and environmental groups, including the Center for Biological Diversity.

The original goal was to find solutions to mitigate whale entanglements in the fishery and keep varied interests working together rather than fighting in court.

In a battle for narrative, both fishermen and the CBD have laid claim to initiating the working group.

After two years, the CBD postulated that not enough was being done to stop entanglements and filed suit in federal court, said Steve Jones, a spokesman for the environmental organization.

"We participated cooperatively but finally sued







**Billy Igo, Brent Thiebout and Ben Platt (skipper) of the F/V Seastar on opening night of the northern California Dungeness season in 2018.**

because nothing was being done to change conditions on the water,” Jones said. “Remember, in June 2016 there was about one entanglement a day.”

The settlement between the state of California, the Pacific Coast federation and the Center for Biological Diversity will require a federal incidental take permit, but will allow

for fishing to continue in months where whale migration and crab gear don’t overlap. In the settlement, the state of California and representatives of fishermen agreed to an April 15 closure this year and an April 1 closure of the fishery south of Mendocino in following years until the permit is issued by the federal government.

Fishermen using new ropeless gear will be exempt from the early closure. But that gear is expensive — about \$15,000, compared to \$200 for a traditional crab pot — and still has technical hurdles to overcome.

Fishermen had wanted a better deal, but in March a U.S. District Court judge in northern California said if she had to make a decision she would rule in favor of the Center for Biological Diversity, holding the state of California liable for whale entanglement. (The original suit did not name the Pacific Coast federation as a defendant; the organization filed a motion to intervene to ensure fishermen’s interests were legally represented through the litigation.)

Early closures are a hit to the fleet, which faced months-long delays in three of the last four years. Domoic acid levels were too high in the winter months when the fishery typically opens — the 2015-16 season was delayed until late March 2016 because of the toxin. Those delays resulted in an increase in spring fishing, which is believed to have led to an increase in whale entanglements with crab gear.

While the spring months aren’t typically

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Fishermen helped free this humpback whale about two miles off Crescent City, Calif., in 2017.

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the highest volume time of year for Dungeness crab fishermen in years that trend to normal — a growing rarity in California — the market price tends to be high with a strong demand for live-market crab. Small-boat crabbers also face less competition from larger boats in the fishery.

For Oppenheim, who made the state's fishermen a party to the lawsuit, the federation was not negotiating from a position of power: The state of California wanted a settlement, the judge appeared to be leaning in favor of the plaintiff, and the Center for Biological Diversity was not backing down.

“With that chess game set up, we were in the weakest position possible,” Oppenheim said. “If we weren't at the table, we would have been completely screwed — far worse than it would have been now. It's an awful deal; it could have been far worse.”

Much of the fleet, however, feels they were not fairly represented.

“There are zero fishermen in the California crab fleet that are happy with the settlement agreement,” said Platt. “We all wanted this to be settled, but I don't think anyone thought the settlement would be this bad.”

The object of the lawsuit, according to Jones, was never a multiseason closure and to put fishermen out of work, but to force the state of California to adhere to federal law, the Endangered Species Act, and to limit entanglements by keeping gear out of the water when whales are migrating.

“Saying we wanted to shut down the fishery is simply not true. We want this fishery to be more sustainable, and it's pretty good in most respects,” Jones said, noting Dungeness crab is one of his favorite foods. “But the whale entanglement issue is a big black mark and needs to be resolved.”

With the settlement, the California Dungeness Crab Fishing Gear Working Group is

not going away and will continue to be responsible for assessing risk and mitigating entanglements.

The California Legislature passed a law last year, in part to stave off court actions by the CBD, that gave the director of state Fish and Wildlife Department the ability to shut down the crab fishery, in coordination with assessments by the working group, when risks of whale entanglement were high.

Under the terms of the settlement, that provision is still in effect. And fishermen, scientists and environmentalists will continue to develop models through the state-managed working group, looking at patterns in whale migration, location of forage fish like krill and anchovies and fishing activity. When the risks for entanglement are too high in specific areas, the working group and Fish and Wildlife would move to close the fishery.

What's different now is that the CBD is an unofficial partner in the management of the Dungeness crab fishery, according to the terms of the settlement. Fishermen like Platt are deeply disappointed in that outcome.

“We now have a radical NGO dictating a state-managed fishery,” Platt says. “The state abdicated their responsibility to manage this fishery.”

While CBD has no official capacity in managing the fishery, the details of the settlement with the NGO require very strict management of the fishery, giving little leeway for fishing in the presence of whales.

For other Dungeness crab fishermen like Calder Deyerle, 31, a member of the working group, who's based in the Monterey Bay, the settlement is not catastrophic. He'll be sorry to lose the opportunity to fish for crab in the spring and summer months, but said the closures agreed to in the settlement might not be that different from closures required by the working group's risk assessments.

“We have to remember 2016 — that was an absolute disaster,” Deyerle said of the time when whale migrants and large-scale fishing efforts overlapped in a delayed season. “We have to be extra careful the next few years; there are a lot of eyes on us.”

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The Seastar is locked and loaded for spring crabbing in sunny Morro Bay, Calif. The spring season, a live-market boon to many local fishermen, is threatened by litigation.