

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Sections 132.1, 132.2, and 132.3
Add Section 132.6

Title 14, California Code of Regulations
Re: Dungeness Crab Trap Surface Gear Limitations and Gear Removal Time

I. Date of Initial Statement of Reasons: May 29, 2018

II. Dates and Locations of Scheduled Hearing:

Public Discussion Hearing: Date: July 31, 2018

Location: Justice Joseph A. Rattigan Building
Conference Room 410 (Fourth Floor)
50 D Street
Santa Rosa

Start Time: 9:00am

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

The minor amendments to sections 132.1, and 132.3 are editorial and without regulatory effect. It is necessary to make these minor amendments to subsections of text to clarify the status of current regulations and remove dates that are no longer in effect. Section 132.2 is amended to allow any vessel to retrieve traps from a Dungeness crab permitted vessel to facilitate in-season removal of trap gear when the owner becomes incapacitated or is otherwise rendered unable to retrieve his/her traps. This will expand the pool of potential vessels that could help retrieve traps left out in the ocean in-season and is necessary for the fishery to improve its ability of removing traps from the ocean that pose a whale entanglement risk and navigational hazards.

The purpose of adding Section 132.6 to Title 14 is to limit the surface lines and buoys utilized by the crab fishery to retrieve their submerged crab traps, and to clarify the time and date when all Dungeness crab fishing gear must be removed from state waters. This is necessary because whale entanglement is a serious problem that can be mitigated by setting standards that limits surface gear. Fishermen have also indicated this will reduce navigational hazards by reducing the risk of entangling line in propellers, which could

cause loss of power.

Specifying the removal time of trap gear at the end of the season will clarify existing requirements of the Fish and Game Code and help to ensure that traps are removed when whales are more likely to be found along the California coast.

In recent years, there has been a rise in the number of whale entanglements involving Dungeness crab trap gear. In order to address this problem, the Department, in partnership with the National Marine Fisheries Service and the Ocean Protection Council, convened the California Dungeness Crab Fishing Gear Working Group (Working Group). The Working Group serves an advisory role to the Department to reduce the risk of whale entanglements in Dungeness crab fishing gear. The Working Group is comprised of multiple stakeholder representatives that includes: nine commercial Dungeness crab fishermen representing the major ports of the fishery; two recreational fishermen; four members from environmental NGOs; and five members from state and federal agencies. The Working Group meets regularly in a structured and collaborative setting and is currently in the process of developing a mitigation program to address whale entanglement risk.

One of the Working Group's tasks has been to review photos of fishing gear involved with whale entanglements. The most notable characteristic observed by the group was the amount of excess surface trap gear that includes lines and buoys, which may have increased the likelihood of the entanglement. The Working Group considered how to reduce surface trap gear in an effort to prevent entanglements. It is believed that excess line creates an entanglement hazard when slack in the line causes loops to form. The Working Group developed recommendations for fishing gear modifications that were integrated into the best practices guide that has been circulated for the past two seasons to the Dungeness crab fishing fleet.

At the Working Group meeting held on April 23-24, 2018, members were asked for their input on the proposed regulatory program to reduce excess surface gear. Discussions focused on the buoy set-up recommendation in the 2017-18 Best Practices Guide (BPGs) and how the regulations could accommodate the various practices in use by the fleet and instances for inclement ocean conditions when surface line is pulled down by stronger currents and larger swells. Although members recommended BPG measures be employed at all times, the group deliberated on what limitations of surface gear would be effective, reasonable and practical.

The following measures were agreed upon by members of the Working Group (see figures 1 and 2).

- At 210 feet (35 fathoms) and shallower, no more than one trailer buoy can

be used and the maximum length of line from this buoy to either the main buoy or the vertical line attached to the trap can be no more than 24 feet (4 fathoms) in overall length.

- Deeper than 210 feet (35 fathoms), no more than two trailer buoys can be used, and the maximum length of line from the outermost trailer buoy can be no more than 36 feet (6 fathoms) in overall length to either the main buoy or the vertical line attached to the trap.
- End marker buoys were defined as being less than five inches in diameter. At all depths, no more than three feet of additional line could be attached from the end marker buoy to the outermost trailer buoy. End marker buoys, typically, are not found on every trap, and they are used for the purpose of marking trap strings and not to float the surface line.

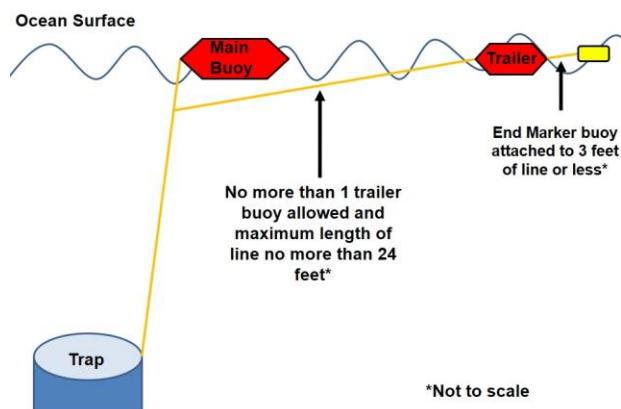


Figure 1. Surface gear diagram at shallow depth range of equal to or less than 210 feet (35 fathoms).

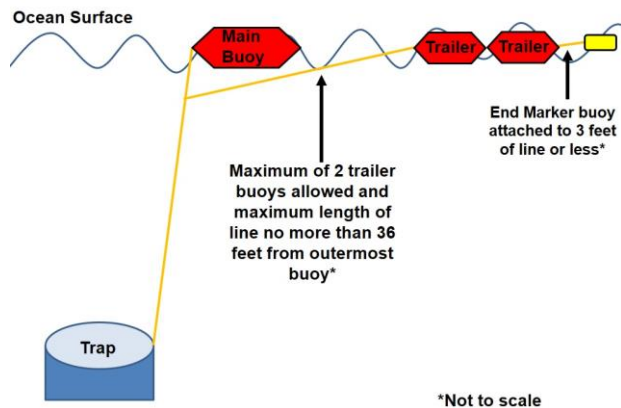


Figure 2. Surface gear diagram at deep depth range of greater than 210 feet (35 fathoms).

Current Regulations- Dungeness Crab Season and Trap Gear:

- 702 Authority of Department to adopt regulations to administer the Fish and Game Code
- 7056(d) Implement fishery management to limit bycatch
- 7059(b) The Commission and Department shall collaborate with the fishery and consider the gear.
- 8276 Establishes Dungeness crab fishing seasons by fishing district
- 8277 Director is authorized to extend the Dungeness crab season
- 9002(a) Unlawful to raise traps not owned by the person, and (d) Department or safety personnel may raise or remove traps that are a nuisance, but must attempt to contact the owner.
- 9002.5 The Department shall develop regulations for the retrieval of lost and abandoned crab traps.
- 9004 Traps shall not be abandoned.
- 9005 Every trap or string of traps needs to be marked with a buoy
- 9007 Unmarked buoys are allowed to be removed by authorized person.

Title 14, California Code of Regulations:

- 132.1 – 132.5 Regulation, specification, and limitations of crab trapping gear.
- 180, 180.2, and 180.5 Regulation of fishing traps, generally.

[Note that neither the Fish and Game Code nor Title 14 regulations currently limit the number of additional buoys or line length used by the crab fishery.]

Proposed Regulations:

Amend sections 132.1, 132.2, and 132.3. Several minor amendments to subsections of text are proposed to clarify current regulations:

- Section 132.1, first paragraph, delete introductory statement that identifies the initial season of 2013 for the crab trap tag requirements since the start date has passed and the regulation is in full effect at this time; and
 - Move statement that “Every Dungeness crab trap aboard a permitted Dungeness crab vessel and fished in California waters shall have a valid tag attached to the Dungeness crab trap” to subsection (a) Dungeness Crab Trap Tags, and renumber the subsection.

- The last provision within the first paragraph “and a valid tag assigned to that vessel attached to the buoy” is removed since this requirement is presently set forth in subsection (b).
- Updated title of Section 132.2 to reflect amendments.
 - Subsection 132.2(a) currently specifies “No Dungeness crab permitted vessel shall...”, the words ‘Dungeness crab permitted’ are deleted, with the effect that this will expand the pool of potential vessels that could help retrieve traps left out in the ocean in-season and is necessary for the fishery to improve its ability of removing traps from the ocean that pose a whale entanglement risk and navigational hazards.
 - Subsection 132.2(a)(2) requires a clarifying edit to replace “another” with “a” Dungeness crab permitted vessel and subsection 132.2(a)(2)(F) stipulates the conditions under which that a Dungeness crab permitted vessel (DCPV) may retrieve more than six derelict traps. The amendment would allow any vessel to retrieve crab traps under the same conditions to facilitate trap retrieval in-season.
 - Subsection 132.3(a) delete the provision for an initial effective season of 2013 for the Dungeness Crab Trap Limit Permit. That season is over and the regulation is full effect.

Add Section 132.6, Title 14, CCR: Limiting Surface Gear of Dungeness Crab Traps.

- Limit the addition of trailer buoys from the main buoy of a Dungeness crab trap dependent on whether a trap is in shallow or deeper water:
 - Equal to and less than 210 feet depth (35 fathoms) – one trailer buoy;
 - Greater than 210 feet depth (35 fathoms) – two trailer buoys.
- Specify the dimension of the end marker buoys utilized by the fleet to mark trap strings to no more than five inches in diameter, this distinguishes these buoys from trailer buoys and the associated restrictions, and
 - set a separate maximum length of three feet of line between the end marker buoy and the outermost trailer buoy.
- Specify the maximum length of line attached between the outermost trailer buoy and either the main buoy or the vertical line attached to the trap dependent on whether a trap is in shallow or deeper water:
 - Equal to and less than 210 feet depth (35 fathoms) - 24 feet of line;
 - Greater than 210 feet depth (35 fathoms) - 36 feet of line.
 - Specify that pursuant to sections 8276 and 8277 of the Fish and Game Code that all Dungeness crab trap gear must be removed from

state waters at 11:59pm on the last day of the season.

Rationale

Limiting the number of trailer buoys in addition to the main buoy and setting a maximum line length will have the overall effect of reducing the total number of buoys and lines in the water, and therefore reducing the risk of whale entanglement. In addition, the reduction in floating line will reduce navigational hazards by reducing the probability of wrapping line around propeller shafts of vessels. The enforcement of crab trap surface gear regulations would be straightforward and would not involve pulling submerged traps. Stating the time in which trap gear is no longer allowed in state waters at the end of the season is to provide clarity to current statutes.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Section 132.1

Authority cited: Sections 8276.5, Fish and Game Code.

Reference: Sections 8276.5, Fish and Game Code.

Section 132.2

Authority cited: Sections 8276.5 and 9002.5, Fish and Game Code.

Reference: Sections 8276.5 and 9002.5, Fish and Game Code.

Section 132.3

Authority cited: Sections 8276.5, Fish and Game Code.

Reference: Sections 8276.5, Fish and Game Code.

Section 132.6

Authority cited: Sections 702, 7059, 8276, and 8277 Fish and Game Code.

Reference: Sections 7056, 7059, 8276, 8277, 9002.5, 9004, 9005, and 9007, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change: None

(d) Identification of Reports or Documents Supporting Regulation Change:

- 2015 Whale Entanglements off the West Coast of the United States Issued by NOAA Fisheries:
http://www.westcoast.fisheries.noaa.gov/publications/protected_species/marine_mammals/cetaceans/whale_entanglement_fact_sheet.pdf
- 2016 West Coast Entanglement Summary Issued by NOAA Fisheries:
http://www.westcoast.fisheries.noaa.gov/mediacenter/WCR%202016%20Whale%20Entanglements_3-26-17_Final.pdf
- 2017-18 Best Practices Guide: First developed by the California

Dungeness Crab Fishing Gear Working Group in 2015 and updated in 2016 and 2017:

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=150177&inline>

- Working Group's 2016-17 Fishing Season Recommendations and Summary of Key Themes discussed during the September 21-22, 2016 meeting that includes the recommended voluntary gear modifications incorporated in to the 2017-18 Best Practices Guide (pg. 3):

http://www.opc.ca.gov/webmaster/_media_library/2016/08/WhalesMeeting_SummarySept2016.pdf

- Working group fact sheet summarizing tasks and collaborative approach of the group including the development of the latest version of the Best Practices Guide:

http://www.opc.ca.gov/webmaster/_media_library/2016/08/Working-Group-Fact-Sheet_October-2017.pdf

- Working Group's recommendations to the regulation proposal discussed during the April 23-24, 2018 meeting (pg. 7):

http://www.opc.ca.gov/webmaster/_media_library/2018/05/CAWorkingGroup_KeyThemesSummaryApril2018Meeting_FINAL.pdf

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

The following includes any public Dungeness crab Task Force meeting summaries from 2015 to present when recommendations of the Working Group were discussed or issues related to the in-season waiver process for trap retrieval:

- May 19, 2015 Executive Committee Conference Call Meeting Summary: http://www.opc.ca.gov/webmaster/_media_library/2009/04/DCTF_EC_MtgSum_May2015.pdf
- October 26-27, 2015 Dungeness Crab Task Force Meeting Summary: http://www.opc.ca.gov/webmaster/_media_library/2009/04/DCTF_FINAL_AbridgedSummary_Oct2015.pdf
- October 25-26, 2016 Dungeness Crab Task Force Meeting Summary: http://www.opc.ca.gov/webmaster/ftp/project_pages/dctf/meeting-6/DCTF_AbridgedSummary_Oct2016_FINAL.pdf
- April 11, 2017 Executive Committee Conference Call Meeting Summary: http://www.opc.ca.gov/webmaster/_media_library/2009/04/DCTF_ECMeeting_Apr2017_FinalSummary.pdf

- October 3, 2017 Executive Committee Conference Call Meeting Summary:
http://www.opc.ca.gov/webmaster/media_library/2009/04/DCTF_Final_ECMeetingSummary_Oct2017.pdf
- October 16-18, 2017 Dungeness Crab Task Force Meeting Summary:
http://www.opc.ca.gov/webmaster/media_library/2009/04/DCTF_AbridgedSummary_FINAL_Oct2017.pdf

The following includes meeting summaries or highlights from all in-person Dungeness crab Fishing Gear Working Group Meetings from 2015 to present (these meetings are not open to the public):

- September 21-22, 2015 Meeting Summary:
http://www.opc.ca.gov/webmaster/media_library/2015/08/CAWhaleEntanglement_Dcrab_Sept21_KeyThemesSummary_FINAL.pdf
- October 8, 2015 Final Recommendations and Meeting Summary:
http://www.opc.ca.gov/webmaster/media_library/2015/08/CAWhaleEntanglement_Dcrab_Oct8_KeyThemesSummary_FINAL.pdf
- September 21-22, 2016 Meeting Summary:
http://www.opc.ca.gov/webmaster/media_library/2016/08/WhalesMeeting_SummarySept2016.pdf
- July 13-14, 2016 Meeting Summary:
http://www.opc.ca.gov/webmaster/ftp/project_pages/whale-entanglement/CAWhaleEntanglement_Dcrab_July13_Keythemesummary_Final.pdf
- May 16-17, 2017 Meeting Summary:
http://www.opc.ca.gov/webmaster/media_library/2016/08/Whales_WGSu_mmary_May2017_FINAL.pdf
- July 18-19, 2017 Meeting Summary:
http://www.opc.ca.gov/webmaster/media_library/2016/08/Whales_WGSu_mmary_July2017_FINAL.pdf
- September 27-28, 2017 Meeting Highlights:
http://www.opc.ca.gov/webmaster/media_library/2016/08/CAWorkingGroup_KeyHighlights_September2017.pdf
- April 23-24, 2018 Meeting Highlights:
http://www.opc.ca.gov/webmaster/media_library/2018/05/CAWorkingGroup_KeyThemesSummaryApril2018Meeting_FINAL.pdf

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Consideration was given, but rejected, by the Working Group to limiting to one trailer buoy at all depths, but didn't accommodate periods of inclement weather when surface gear would be more likely be pulled down and irretrievable at deeper depths.

Consideration was given, but rejected, by the Working Group to limit line to include three depth and/or specify different depths, as suggested on the recent version of the Best Practices Guide. Three depth strata would involve more complex regulations that would be difficult for the fishery to comply and difficult for the Department to enforce while the depth strata that was chosen accommodates deeper depths that would necessitate the need for two trailer buoys to be used.

(b) No Change Alternative:

The No Change Alternative (not limiting surface gear) would not satisfy the obligation set forth in Section 7059, that the Department "give particular consideration to the gear used" when "involving fishery participants in the [fishery] management process." Additionally, a no change alternative would not help to address the risk of whale entanglements.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

V. Mitigation Measures Required by Regulatory Action:

The Department is developing regulations to reduce gear in the water to help lower the risk of whale entanglement. In achieving that goal, the proposed regulation results in overall less crab trap gear being deployed in state waters, thereby reducing the risk of whale entanglement and reducing gear that might be lost or abandoned. Therefore the proposed regulation improves the marine environment and does not require mitigation measures for its implementation.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial

determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The regulations do not affect any business' ability to compete with businesses in other states by imposing any hardship, fee or license. The restriction on line length and buoys relates to equipment already in use by the fishery – not an additional equipment requirement.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California;

The regulations do not affect jobs or businesses by imposing any hardship, fee or license. The restriction on line length and buoys relates to equipment already in use by the fishery – not an additional equipment requirement.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Department anticipates benefits to the health and welfare of California residents from better protection of the State's natural resources. Two environmental issues addressed by the regulations directly affecting California residents. First the issue of whale, and other marine mammal, entanglement is a serious and increasing threat to California wildlife that has a significant public interest. The second issue is public safety, lost lines, buoys, and traps pose a hazard to ocean navigation and are often washed ashore as detritus. Limiting lines and buoys, and adding more approved vessels for retrieval furthers the department's goals of wildlife protection and public safety.

- (c) Cost Impacts on a Representative Private Person or Business:

Compliance with the proposed action does impact expenditures on equipment with the reduction in the number of trailer buoys and lines attached to each crab trap. Recovery of lost gear by the added vessels allowed to recover gear may be a benefit to the gear owners who otherwise may have abandoned the gear.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None.

VII. Economic Impact Assessment:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The intended regulations will overall reduce fishing gear and potentially lower business costs.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

The regulations do not affect jobs or businesses by imposing any hardship, fee or license. The restriction on line length and buoys relates to equipment already in use by the fishery – not an additional equipment requirement.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Department anticipates benefits to the health and welfare of California residents from better protection of the State's natural resources. Two environmental issues addressed by the regulations directly affecting California residents. First the issue of whale, and other marine mammal, entanglement is a serious and increasing threat to California wildlife that has a significant public interest. The second issue is public safety, lost lines, buoys, and traps pose a hazard to ocean navigation and are often washed ashore as detritus. Limiting lines and buoys, and adding more approved vessels for retrieval furthers the department's goals of wildlife protection and public safety.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the

proposed action. Compliance with the proposed action should reduce expenditures on equipment with the reduction in the number of trailer buoys and lines attached to each crab trap.

(d) Benefits of the Regulation to the State's Environment:

The intended effect of the regulation is to reduce bycatch especially with marine mammals, thereby, reducing any negative impacts to the marine environment.

(e) Other Benefits of the Regulation:

The proposed regulations will limit the amount of surface gear used on Dungeness crab traps that will likely also reduce navigational hazards.