

**TITLE 14. DEPARTMENT OF FISH AND WILDLIFE
NOTICE OF PROPOSED RULEMAKING**

NOTICE IS HEREBY GIVEN that the Department of Fish and Wildlife (Department) proposes to adopt regulations regarding:

The minor amendments to sections 132.1 and 132.3 are editorial and clarify a few of the current regulations while removing dates that are no longer relevant. In Section 132.2 a change in the text will 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. 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. Specifically, the addition of trailer buoys from the main buoy of a Dungeness crab trap and the length of line attached to the trailer buoy will be limited dependent on whether a trap is in shallow or deeper water. Lastly, additional language will clarify existing law that Dungeness crab trap gear must be removed from state waters at 11:59 pm on the last day of the season.

After consideration of all public comments, objections, and recommendations regarding the proposed action, the Department will render a decision.

PUBLIC HEARING

The Department will hold a public hearing on:

Date: July 31, 2018
Time: 9:00 a.m. to 11:30 a.m.t.
Location: State Office Justice Joseph A. Rattigan Building
Conference Room 410 (Fourth Floor)
50 D Street, Santa Rosa , California

The Conference Room is wheelchair accessible. At the public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that the persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments on the proposed action to the Department. All written comments must be received by the Department by mail, fax, or e-mail no later than 5:00 p.m. on August 13, 2018, as follows:

California Department of Fish and Wildlife
Attn:Christy Juhasz, Environmental Scientist
5355 Skylane Blvd., Suite B
Santa Rosa, CA 95403
Fax: (707) 576-7132
Email: Christy.Juhasz@wildlife.ca.gov

Written public comments may be hand delivered to the Department during the hearing.

AUTHORITY AND REFERENCE:

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.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The general purpose of the regulations is to limit gear and improve the ability to remove possible whale entangling gear from the ocean.

The minor amendments to sections 132.1 and 132.3 are editorial and clarify a few of the current regulations while removing dates that are no longer relevant. In Section 132.2 a change in the text will 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 whale entanglement 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. 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. Specifically, the addition of trailer buoys from the main buoy of a Dungeness crab trap and the length of line attached to the trailer buoy will be limited dependent on whether a trap is in shallow or deeper water. Lastly, additional language will clarify existing law that Dungeness crab trap gear must be removed from state waters at 11:59 pm on the last day of the season.

The Marine Life Management Act (MLMA) authorizes the Department to manage fisheries under state jurisdiction with the goal of sustainability and conservation. To support that end, subsection (d) of section 7056 of the Fish and Game Code stipulates that a fishery limit bycatch (the unintended species that are caught, including of whales) to acceptable types and amounts, as determined by each fishery.

BENEFITS OF THE PROPOSED REGULATIONS

Limiting the number of trailer buoys in addition to the main buoy and setting a standard for line length will have the beneficial effect of reducing buoys and lines that could be entangled with a whale and also pose navigational hazards. Crab trap permittees will be required to make adjustments to their current gear to comply, no additional expenditure is necessary. Monitoring compliance of lengths of line and number of trailer buoys by depth range would also be relatively simple for enforcement purposes as it would not involve pulling submerged traps.

Nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government.

The Department anticipates nonmonetary benefits to California residents from better protection of the State's natural resources. Two environmental issues addressed by the regulations directly affect California residents. First the issue of whale, and other marine mammal, entanglement is a serious 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 and worker safety.

The regulations do not address the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government

Consistency with State Regulations

Department staff has conducted a review of the California Code of Regulations and determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. No other State agency has the statutory authority to amend regulations pertaining to the Dungeness crab trap limit program or modify fishing gear for the commercial Dungeness crab fishery.

DETERMINATIONS REGARDING THE PROPOSED ACTION

- (a) The Department has reviewed Title 14 in the CCR and has determined that the proposed action is neither inconsistent nor incompatible with existing state regulations.
- (b) Mandates imposed on Local Agencies or School Districts: None.
- (c) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (d) 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.
- (e) 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.

- (f) Cost Impacts on a Representative Private Person or Business: The Department 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 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.

- (g) 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 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.

(h) Effect on Small Business:

The proposed regulations affect small businesses specifically involved in the Dungeness crab trap fishery.

DOCUMENTS RELIED UPON

- 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

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

MITIGATION MEASURES REQUIRED BY REGULATORY ACTION

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

CONTACT PERSONS

Inquiries concerning the proposed administrative action should be directed to:

California Department of Fish and Wildlife, Marine Region
Attn:Christy Juhasz, Environmental Scientist
5355 Skylane Blvd., Suite B
Santa Rosa, CA 95403
Phone: (707) 576-2887
Fax: (707) 576-7132
Email: Christy.Juhasz@wildlife.ca.gov

The backup contact person is:

California Department of Fish and Wildlife, Marine Region
Attn: Anthony Shiao, Environmental Scientist
1933 Cliff Dr. Suite 9
Santa Barbara, CA 93109
Phone: (805) 560-6056
Email: Anthony.Shiao@wildlife.ca.gov

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Christy Juhasz (see above for contact information).

AVAILABILITY OF THE INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying at its office at the above address. As of the date this notice is published, the rulemaking file consists of:

- Notice of Proposed Rulemaking
- Proposed Regulatory Text
- Initial Statement of Reasons
- CEQA Notice of Exemption
- Economic and Fiscal Impact Assessment (STD. Form 399).

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The rulemaking file is available online: <https://www.wildlife.ca.gov/Notices/Regulations>

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received by the Department, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Christy Juhasz (see above for further contact information). The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Christy Juhasz (see above for further contact information).