

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
FINAL 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. Date of Final Statement of Reasons: August 30, 2018
- III. Dates and Location of Scheduled Hearing:

Public Hearing: July 31, 2018

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

- IV. Update:

The public comment period for the initially proposed text of regulations began June 8 and was extended, based on errors contained in the notice, until August 13, 2018. The ISOR and associated notice for this rulemaking package erroneously indicated a June 23 date for the end of public comment, and contained an error in the contact information for submittal of comments. On June 27, 2018, the Department provided a supplemental notice with the correct information and extended the public comment period to August 13 to ensure a full 45-day opportunity for comment.

The legislatively mandated Dungeness Crab Task Force (Task Force) held a meeting on June 5-6, 2018 to consider the Department's proposed regulation. Its recommendations were set forth in a letter email received on June 28, 2018. The Task Force recommended amendments to allow no more than two trailer buoys at any depth to accommodate fishing practices currently utilized by the fleet and to clarify that the total length of surface gear should be measured between the front end of the main buoy to the tail end of the last trailer buoy. Dungeness crab permittees have raised concerns with the removal and on board storage of the extra line and trailer buoys that would have been required with the original proposal only allowing one trailer buoy when moving to shallower depths.

The public hearing to receive public comments was held on July 31, 2018. In response, the Department amended the proposed regulatory text of Section 132.6 Dungeness Crab Trap Surface Gear Limitations and Gear Removal Time. The initial public comment period (ending August 13, 2018) was extended an additional 15 days, August 14-29, 2018, to receive comments concerning these amendments.

The following changes to the proposed regulatory text of Section 132.6 address recommendations and concerns submitted to the Department during the public comment period related to the gear configuration and measurement of the surface gear:

- Subsection 132.6(a)(1), limit the addition of trailer buoys from the main buoy to “No more than two trailer buoys” regardless of depth.
- Subsection 132.6(c), specify that the maximum length of line is to be measured “between the front end of the main buoy to the tail end of the last trailer buoy.”

After considering the public comments received during the initial 45-day review period, the Department adopted the originally proposed text of sections 132.1, 132.2, and 132.3. After considering the amended text, as recommended by the Dungeness Crab Task Force and public comment, as described in the 15-day Notice, the Department adopted the amended text of Section 132.6.

Rationale

This updated proposal would increase the number of buoys from the initial proposal by one buoy in depths equal to or less than 210 feet to accommodate current fishing operations utilized by the fleet to service their gear. Removing the depth criteria for the number of trailer buoys simplifies compliance and enforcement of proposed regulations.

The language also amends the measurement of surface gear to better describe the distance between the main buoy and the last trailer buoy and should have the overall effect of either maintaining or reducing the length of line between the main buoy and the last trailer buoy.

Figures 1 & 2 summarize the updated surface gear configuration from the amended text.

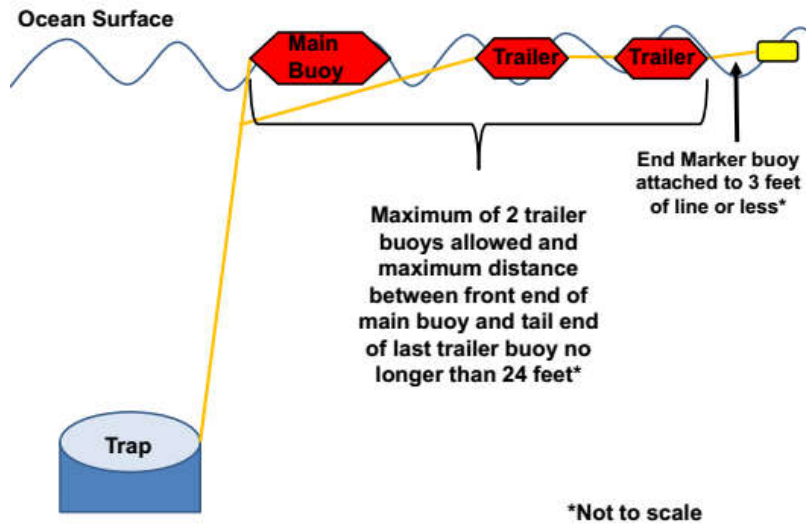


Figure 1. Surface gear diagram at shallow depth range of equal to or less than 210 feet (35 fathoms).

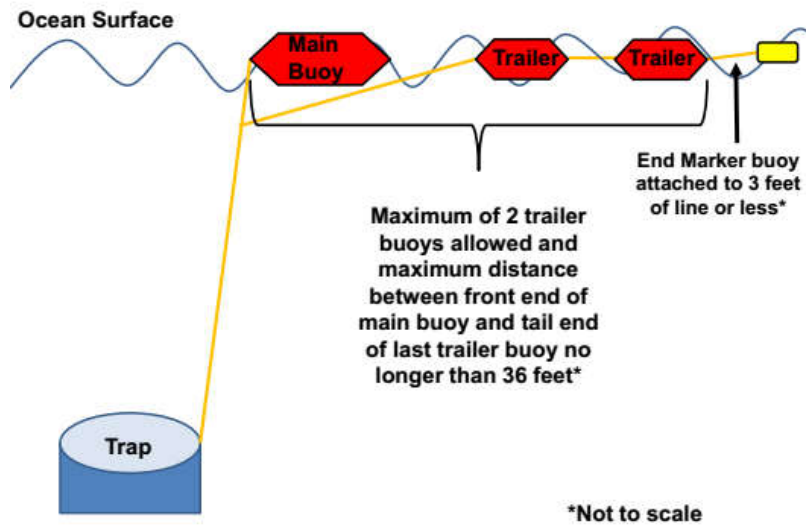


Figure 2. Surface gear diagram at deep depth range of greater than 210 feet (35 fathoms).

V. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

All written and verbal comments received by the Department on the proposed regulatory changes are summarized and responded to in Attachment A of this Final Statement of Reasons for Regulatory Action. The public comment period closed on August 29, 2018.

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Department of Fish and Wildlife
5355 Skylane Blvd., Suite B
Santa Rosa, CA

Department of Fish and Wildlife
1416 Ninth Street, Room 1342A
Sacramento, California

VI. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

1. Written comments from the public suggested alternative gear configurations to address surface gear limitations. Please refer to the response to comments in Attachment A as to why these alternatives were not considered since they would not be more effective nor have the intended effect of limiting excessive gear at the surface.
2. Consideration was given, but rejected, to an alternative proposed by the Dungeness crab Gear Working Group (Working Group), the advisory body comprised of agency and stakeholder members that aims to reduce whale entanglement risk with the Dungeness crab fishery, to allow only one trailer buoy at all depths (rather than the proposed and adopted two trailer buoys at any depth). However, this alternative would not be as effective during periods of inclement weather when surface gear would be more likely to be pulled down and irretrievable at deeper depths.
3. Consideration was given, but rejected, to an alternative proposed by the Working Group to specify gear at three depths (rather than the proposed two depths, at equal to or less than 210 feet or greater than 210 feet). This alternative would not be as effective and too difficult for the fishery to comply and for the Department to enforce.

(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 effectively 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 adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

VII. 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 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 proposed action is not anticipated to impact 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 proposed action is anticipated to positively impact the health and welfare of California residents, worker safety, and the state’s environment by improving the aesthetics, ecology, and navigability of the state’s coastal water.

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

The proposed action is not anticipated to impact 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 proposed action is anticipated to positively impact the health and welfare of California residents, and the state’s environment by improving the aesthetics, ecology, and navigability of the state’s coastal water. The regulation does not address worker safety.

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

In the short term, fishermen may have to spend time adjusting lines that are not currently in compliance with the proposed action, overall when gear needs to be replaced this should reduce expenditures on equipment purchases with the reduction in the number of trailer buoys and lines attached to each crab trap.

- (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.