

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 implementing the program described in Section 9002.5 of the Fish and Game Code. Section 9002.5 authorizes the Department to establish a program which incentivizes the removal of commercial Dungeness crab trap gear that remains in the ocean after the end of the fishing season, reducing entanglement risk, other threats to marine life, and navigational hazards.

The program would rely on Retrieval Permittees to ensure that retrieval operations are conducted by competent individuals, and to negotiate with Responsible Vessel Permitholders to return the trap gear upon appropriate reimbursement for costs incurred during gear retrieval operations.

After consideration of all public comments, objections, and recommendations regarding the proposed action, the Department may adopt the proposed regulations.

PUBLIC HEARING

The Department will hold a public hearing on **April 2, 2019, from 9:00 a.m. to 11:30 a.m.**, at:

State Office Justice Joseph A. Rattigan Building
Conference Room 405 (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. Comments may be submitted at the hearing, by mail, or by email. The written public comment period closes at 5:00pm on April 1, 2019. The Department will only consider comments received by that time. Submit comments to:

California Department of Fish and Wildlife, Marine Region
Attn: Morgan Ivens-Duran, Environmental Scientist
20 Lower Ragsdale Blvd., Suite 100
Monterey, CA 93940
Email: Morgan.Ivens-Duran@wildlife.ca.gov

AUTHORITY AND REFERENCE:

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 132.7

Authority cited: Sections 9002.5 Fish and Game Code.

Reference: Sections 8276.5, 8277 and 9002.5, Fish and Game Code.

Section 705

Authority cited: Sections 713, 1050 and 9002.5 Fish and Game Code.

Reference: Sections 713, 1050 and 9002.5, Fish and Game Code.

Informative Digest/Policy Statement Overview

Under current regulations, retrieval of commercial Dungeness crab traps associated with other vessels is only allowed under specific circumstances (Section 132.2, Title 14, CCR). Following the close of the commercial Dungeness crab season, it is unlawful for traps to remain in ocean waters (Fish and Game Code Section 8276(d)). There are currently limited incentives for eligible fishermen to retrieve such gear, and regulations do not specify a mechanism by which individuals can be reimbursed for costs incurred during the retrieval of lost or abandoned trap gear.

The proposed regulation would amend Section 132.2 to allow vessels operating under the authority of the Trap Gear Retrieval Program to retrieve Dungeness crab trap gear belonging to another Dungeness crab vessel permit.

The proposed regulation would also add Section 132.7 to Title 14, CCR to create a program under which qualified individuals can retrieve lost or abandoned commercial Dungeness crab traps, and the accompanying surface lines and buoys, and be reimbursed for costs incurred during retrieval operations. Permitting a broader range of individuals to retrieve trap gear is a necessary step to reduce the risk of whale entanglement with trap gear and the navigational and aesthetic impacts of persistent marine debris. The following is a summary of the new regulations proposed in Section 132.7:

- Define commercial Dungeness crab traps that are left in ocean waters after the close of the season to be lost or abandoned and subject to retrieval by permitted individuals
- Define applicants for a Retrieval Permit as charitable organizations, sport or commercial fisherman associations, or a government entity in California
- Specify the form upon which interested entities will apply for a Retrieval Permit (DFW1078, New 01/23/19) and subsequently amend that permit (DFW1078a, New 01/23/19)

- Specify minimum requirements for Designated Retrievers who are authorized to conduct retrieval operations
- Specify the period during which gear retrieval operations may be conducted, and that gear located in an area where take of Dungeness crab by trap is prohibited may not be retrieved without authorization from CDFW Law Enforcement Division
- Specify a logbook form (DFW1059, New 01/23/19) upon which Designated Retrievers and Retrieval Permittees will document trap retrieval operations and whether a Responsible Vessel Permitholder has paid a Retriever Trap Fee for their retrieved gear
- Specify the Department authority to inspect vessels and facilities to ensure compliance
- Establish criteria for suspension or revocation of a Retrieval Permit
- Establish timelines for contact, title transfer, and disposition of retrieved traps
- Establish a per-trap fee the Department will pay to a Retrieval Permittee if a Responsible Vessel Permitholder does not pay the Retriever Trap Fee
- Levy a per-trap fee for all Responsible Vessel Permitholders who do not pay the Retriever Trap Fee, and allow the Department to suspend renewal or transfer of the Dungeness crab vessel permit until all owed fees are paid

Amending Section 705 will set the Lost or Abandoned Trap Gear Retrieval Permit Application, Lost or Abandoned Trap Gear Retrieval Permit Amendment, and Lost or Abandoned Department Trap Gear fees. The Application and Amendment fees are necessary to recover Department costs to process and oversee activities authorized by a Retrieval Permit. The Department Trap Fee would be paid by a Dungeness crab vessel permittee to recover Department costs associated with non-payment of the Retriever Trap Fee.

The proposed regulations will encourage removal of lost or abandoned Dungeness crab trap gear and therefore reduce the risk of marine life entanglement, improve the aesthetics of coastal waters, and remove navigation hazards from ocean waters. In addition, the amount of the freely-negotiated Retriever Trap Fee paid to the Retrieval Permittee is expected to be less than the market price of purchasing new traps and associated surface gear (lines and buoys). Thus, the program is also expected to benefit the Dungeness crab fishing fleet by reducing costs from replacing lost gear.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated the Department authority to implement a commercial Dungeness crab trap gear retrieval program (Section 9002.5 of the Fish and Game Code). The Department has reviewed existing regulations in Title 14 of the California Code of Regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

FORMS INCORPORATED BY REFERENCE

The following forms are incorporated by reference in the proposed regulations:

- DFW1059, Trap Gear Retrieval Logbook, New 01/23/19
- DFW1078, Lost or Abandoned Commercial Dungeness Crab Trap Gear Retrieval Permit Application, New 01/23/19
- DFW1078a, Lost or Abandoned Commercial Dungeness Crab Trap Gear Retrieval Permit Amendment, New 01/23/19

DISCLOSURES REGARDING THE PROPOSED ACTION

- (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.

- (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 anticipated to prompt some additional job opportunities associated with the gear retrieval program at the end of the commercial Dungeness crab season until September 30. The gear retrieval program may enable the creation of some new businesses or enable the expansion of existing businesses. The proposed action is not anticipated to result in the elimination of jobs or existing businesses. The health and welfare of California residents and worker safety will not be directly impacted. The State's environment should be positively impacted by the removal of gear that could be hazardous to marine life.

- (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.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The Department would issue gear Retrieval Permits and amendments; Responsible Vessel Permits, enforce the program in the field; and reimburse Retrieval Permittees for non-payment by a Responsible Vessel Permittee. The Department will reimburse the Retrieval Permittee and assess trap fees against the non-paying Responsible Vessel Permit holder. All fees are established to recover the reasonable administrative costs of fulfilling each action. It is difficult to anticipate the resulting change in Department revenues until the program is in place for at least one year. The proposed action will not affect Federal funding to the state.

- (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.
- (i) Effect on Small Business: The proposed regulations affect small businesses specifically involved in the Dungeness crab trap fishery and crab trap retrieval.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department concludes that it is (1) likely the program will create additional job opportunities and enable creation of some new, or expansion of existing, businesses engaged in gear retrieval operations; (2) unlikely to result in the elimination of commercial fishing jobs or existing businesses; and (3) likely to benefit the commercial Dungeness crab fishery through returning lost or abandoned gear at a cost lower than replacing the gear.

BENEFITS TO THE STATE'S ENVIRONMENT

The Department anticipates the cumulative effects of the changes to be positive with regard to the state's environment. The proposed regulations establish a program which will reduce the amount of lost or abandoned commercial Dungeness crab trap gear left in the water after the close of the fishing season, thereby reducing the risk of marine life entanglements.

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.

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: Morgan Ivens-Duran, Environmental Scientist
20 Lower Ragsdale Blvd., Suite 100
Monterey, CA 93940
Phone: (831) 649-2811
Email: Morgan.Ivens-Duran@wildlife.ca.gov

The backup contact person is:

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
Email: Christy.Juhasz@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 Morgan Ivens-Duran (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 Monterey address above. As of the date this notice is published, the rulemaking file consists of:

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

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The rulemaking file is available online at:

<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 Morgan Ivens-Duran (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 Morgan Ivens-Duran (see above for further contact information).