

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

Amend Section 132.2;
Add Section 132.7; and
Amend Section 705

Title 14, California Code of Regulations

Re: Waiver for a Vessel to Retrieve a Permitted Dungeness Crab Vessel's Dungeness Crab Traps; Lost or Abandoned Dungeness Crab Trap Gear Retrieval Program; and Commercial Fishing Applications, Permits, Tags and Fees.

I. Date of Initial Statement of Reasons: January 9, 2018

Date of the Amended ISOR: April 30, 2019

II. Dates and Locations of Scheduled Hearings:

Public Discussion Hearing: April 2, 2019

Location: State Office Justice Joseph A. Rattigan Building
Conference Room 405 (Fourth Floor)
50 D Street, Santa Rosa

Start Time: 9:00am

Public Discussion Hearing: June 25, 2019

Location: California Department of Fish and Wildlife
Monterey Office, Large Conference Room
20 Lower Ragsdale Drive, Suite 100, Monterey

Start Time: 10:00am

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 purpose of the amendment to Section 132.2, the addition of Section 132.7, and the amendment of Section 705, Title 14, California Code of Regulations ("CCR"), is to establish a program for the retrieval of crab traps and attached lines and buoys ("trap gear") outside of the commercial Dungeness crab season.

The purpose of the new amendment to subsection 132.2(a) is to specify that retrieval activities must be conducted by Dungeness crab permitted vessels unless specifically authorized by the Department, either under a waiver or under

the program authorized by Section 132.7.

Amendments are also proposed to the originally noticed text of Section 132.7 to address comments received during the original public comment period, which ended April 1, 2019. These additional changes will modify the requirement for Retrieval Permittees to contact Responsible Vessel Permitholders regarding retrieved trap gear via certified mail. Form DFW 1078 was amended to clearly note the fee requirement and correct an incorrect reference to the Fish and Game Commission. Form DFW 1059 was amended to modify the logbook submission deadline, correct the spelling of "USCG" in Item 1, and update the subsection referenced in Item 13 to reflect changes to the regulatory text.

For the purpose of compliance with Government Code Section 11346.8, subdivision (c), the Department considers the amendments to Section 132.7 to be sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. While the Department considers the additional amendments to Section 132.2 to be within the scope of the originally proposed action, to ensure adequate public notice the full text of the resulting amendments, with the changes clearly indicated, is being made available to the public for at least 45 days before the Department amends the resulting regulation. The Department will respond to any written comments received regarding the change in the final statement of reasons required by Government Code Section 11346.9.

A pilot retrieval program in several northern California ports for commercial Dungeness crab gear generated support for establishing a formal program, and subsequent recommendations from the California Dungeness Crab Task Force resulted in amendments to Fish and Game Code Section 9002.5 (McGuire, 2016, SB1287; McGuire, 2018, SB1309). Section 9002.5 requires the Department of Fish and Wildlife ("Department") to establish a program to provide for the removal of commercial Dungeness crab trap gear that remains in the ocean after the end of the fishing season. Removing lost and abandoned trap gear will reduce entanglement risk, other threats to marine life, and navigational hazards.

Section 9002.5 of the Fish and Game Code requires the Department to issue permits authorizing an individual to retrieve lost or abandoned commercial Dungeness crab trap gear and to retain the retrieved trap gear if the Dungeness crab vessel permitholder identified on the trap gear ("Responsible Vessel Permitholder") does not pay a recovery fee ("Retriever Trap Fee"). This section gives the Department the authority to leverage a per-trap fee ("Department Trap Fee") on, and deny renewal and transfer of, a Dungeness crab vessel permit if they refuse to pay for their retrieved gear. This section gives discretion to the Department when implementing this program, including determining who is eligible to retrieve gear under this program and setting the required fees.

Under the proposed Trap Gear Retrieval Program, trap retrieval operations would be conducted at the local level to the extent feasible. Local government entities, fishing associations, and non-profit organizations could apply for an annual Lost

or Abandoned Commercial Dungeness Crab Trap Gear Retrieval Permit ("Retrieval Permit"). Such entities ("Retrieval Permittees") would specify individuals ("Designated Retrievers") who would carry out retrieval operations after the end of the commercial Dungeness crab fishing season. Trap gear retrieved under the requirements of the program would belong to the Retrieval Permittee, who must then contact the Responsible Vessel Permitholder ~~with a notice through certified mail~~. Responsible Vessel Permitholders are required to reimburse Retrieval Permittees for the cost of retrieving the trap gear. If payments are not forthcoming, the Retrieval Permittee will certify the non-payment to, and seek payment from, the Department. Provided that each trap was retrieved under the requirements of the program, the Department will pay a fixed amount to the Retrieval Permittee and assess a Department Trap Fee against the non-paying Responsible Vessel Permitholder. Non-payment of the Department Trap Fee would result in the suspension of renewal and transferability of a Dungeness crab vessel permit.

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 based upon appropriate reimbursement for costs incurred during gear retrieval operations.

CURRENT REGULATIONS

There is currently no formal gear retrieval program that provides payment to someone who retrieves Dungeness crab trap gear left in the water after the close of the commercial season. Section 8276(d) of the Fish and Game code requires all commercial Dungeness crab trap gear to be removed from the water by 11:59 p.m. on the last day of the season in that area. Section 9002 of the Fish and Game Code prohibits any fisherman from disturbing a trap that does not belong to them unless that person is a trap fisherman and has written permission to do so from the owner of that trap. Section 8276.5 of the Fish and Game Code established the Dungeness crab trap limit program, which applied stringent limitations on the total number of traps in the fishery by limiting the number of traps that could be fished by any given permitted vessel and requiring each trap be marked with a uniquely identifiable buoy tag. Section 132.1, Title 14, CCR prohibits a Dungeness crab permitted vessel from possessing any Dungeness crab traps without a buoy tag assigned to that vessel, while Section 132.2, Title 14, CCR allows the possession of up to six derelict crab traps on a fishing trip during the Dungeness crab fishing season and an unlimited number of derelict traps outside of the Dungeness crab fishing season from July 16 to October 31.

A recent amendment to that Section (Register 2018, No. 44, Regulatory Action number 2018-0918-02S), allows any vessel, not just a Dungeness crab permitted vessel, to be granted an in-season waiver to retrieve traps of a Dungeness crab vessel due to vessel incapacitation or undue hardship.

PROPOSED REGULATIONS

~~Amend Section 132.2, Waiver for a Crab Vessel to Retrieve Another Vessel's Dungeness Crab Traps with the following provision:~~

~~Add subsection (a)(3) "To retrieve lost or abandoned gear under Section 132.7 of these regulations." Subsection (a) sets forth instances when another vessel may possess, use, control, or operate a commercial Dungeness crab trap that is not associated with that vessel. None of the current exceptions cover activities to be conducted under the proposed Retrieval Permit. This amendment is necessary to ensure that Designated Retrievers are not violating Section 132.2 when retrieving traps under the authority of Section 132.7.~~

Amend Section 132.2, Retrieval of Commercial Dungeness Crab Traps.

This subsection authorizes vessels to collect up to 6 derelict Dungeness crab traps per trip during the fishing season, and an unlimited number of traps from July 16 through October 31. The amendments specify that gear retrieval activities are limited to Dungeness crab permitted vessels unless conducted under a waiver or Retrieval Permit issued by the Department.

Section 132.2 describes certain instances where vessels may have traps on board which do not comply with requirements of the trap limit program as currently set forth in Section 132.1. These exceptions are intended to facilitate derelict gear retrieval activities by other members of the Dungeness crab fleet.

The Department amended Section 132.2 in 2018. While the intent was to allow non-Dungeness crab permitted vessels to retrieve traps on behalf of a permitted vessel only under a waiver issued by the Department, this amendment inadvertently authorized non-Dungeness crab permitted vessels to participate in all retrieval activities listed in Section 132.2. In accordance with Section 8276.5, which established the trap limit program, and Section 9002.5 of the Fish and Game Code, which instructs the Department to authorize gear retrieval under the permit proposed in Section 132.7, these additional changes are proposed to clarify that gear retrieval activities are limited to Dungeness crab permitted vessels unless specifically authorized by the Department. Dungeness crab permitted vessels have the appropriate crew and equipment needed to safely retrieve derelict gear.

- Subsection (a) is also further amended with non-substantial wording changes to further increase clarity.
- Subsection (a)(2)(F) is deleted and rewritten as (b) Waiver, which describes retrieval activities conducted under a waiver from the Department.
- The prior addition of subsection (a)(3) is deleted and rewritten as (c),

which states that any vessel may retrieve lost or abandoned gear under Section 132.7 of these regulations.

Add Section 132.7, Lost or Abandoned Dungeness Crab Trap Gear Retrieval Program, with the following provisions:

Subsection (a): Declaration of lost or abandoned trap gear

Dungeness crab trap gear that is left in ocean waters after the closure of the commercial Dungeness crab season is declared to be lost or abandoned and subject to retrieval.

Rationale:

Under Section 8276(d) of the Fish and Game Code, all commercial Dungeness crab traps are required to be removed from the water by 11:59 p.m. on the last day of the season in the applicable management area. This subsection defines “lost or abandoned” as it pertains to commercial Dungeness crab trap gear and clarifies that lost or abandoned trap gear is subject to retrieval under the program established in Fish and Game Code Section 9002.5.

Subsection (b): Lost or Abandoned Dungeness Crab Trap Gear Retrieval Permit Required.

Retrieval activities will occur under the authority of a Retrieval Permit granted by the Department. Trap gear is defined to include the trap and any attached lines or buoys. Gear retrieval will only occur after the close of the commercial Dungeness crab season, and permits will expire on December 31st of each year.

Rationale:

This subsection clarifies that possession of a Retrieval Permit, granted by the Department, allows for post-fishing season trap gear retrieval operations which would not otherwise be permitted (e.g. under existing provisions of Section 132.2). Fish and Game Code Section 9002.5 refers to “traps” when defining gear which is subject to retrieval, but that Section does not define “trap”. Lines and buoys attached to a trap present a greater risk of marine life entanglement and navigational hazard than the trap itself. If only the traps are retrieved while associated lines and buoys are left in the ocean, the risk of entanglement remains. Based on the expressed intent of the legislature to reduce whale entanglements and to provide clarity, trap gear is defined as including both the trap and any attached lines or buoys.

The subsection also specifies the Retrieval Permit is an annual permit which expires at the end of the calendar year. By issuing annual permits, the Department will be able to evaluate the performance of the overall program and program participants when reviewing applications in subsequent years. The expiration date for the permit is set on December 31st as opposed to the end of

the retrieval season established in subsection (f) because Retrieval Permittees are bound by several obligations that exist beyond the end of the retrieval season (e.g. completion and submission of Retrieval Logbooks, communications with Responsible Vessel Permitholders). Setting the date at December 31st ensures that the permitted entities retain their status as Retrieval Permittees, and thus the obligations attached to that status, until those obligations have been completed.

Subsection (c): Retrieval Permit Application and Amendment

This subsection restricts Retrieval Permittees to a charitable organization, a sport or commercial fishing association, or a government entity in California. The Retrieval Permit Application form will be available online. Applicants must pay a non-refundable application fee and list each Designated Retriever and associated vessel who will work under the authority of that permit. The subsection also specifies a Retrieval Permit Amendment form, and associated fee, which a Retrieval Permittee would submit to amend their Retrieval Permit.

The Lost or Abandoned Commercial Dungeness Crab Trap Gear Retrieval Permit Application form (DFW1078, New ~~01/23/19~~ 04/25/19) requires the applicant to provide its name, identity and contact information of a responsible person, identity of the Designated Retrievers and vessels to be used, and a signature certifying validity of the form. The Lost or Abandoned Commercial Dungeness Crab Trap Gear Retrieval Permit Amendment form (DFW1078a, New 01/23/19) requires substantially the same information, except that only Designated Retrievers and vessels being added to or removed from the permit need to be listed.

Rationale

This subsection is necessary to establish who is eligible to obtain a Retrieval Permit and how Retrieval Permit and Permit Amendment forms would be made available to interested entities.

Permits are restricted to charitable organizations, fishing associations, and local government entities for administrative and policy reasons. These types of organizations can receive payments from the state's accounting system, Fi\$Cal, and should have staff capable of performing the required administrative tasks, which include managing and coordinating trap retrieval operations with Designated Retrievers operating under their permit, trap storage, and handling communications with and processing payments from Responsible Vessel Permitholders. The Department believes the listed entity types are likely to cover any group that may want to participate in this program.

Retrieval Permit Application and Amendment forms will be made available online to ensure they are easily obtained by interested entities. The Application form requires the entity or organization's name to ensure the applicant qualifies under the criteria in this subsection and a point of contact for the Department regarding activities conducted under the Retrieval Permit. The form requires identification

of the Designated Retrievers by name, so the Department can confirm they meet the requirements listed in subsection (d). All the vessels operating under the Retrieval Permit must also be listed to ensure Law Enforcement officers can verify that gear retrieval operations observed on-the-water are properly authorized. The individual to whom the Retrieval Permit will be issued must certify the form through signature to establish validity.

The Amendment form requires the identity of the Retrieval Permittee to ensure the correct Retrieval Permit is being amended, and to allow a Retrieval Permittee to update their contact information if needed. The Amendment form requires the identity of any Designated Retrievers or vessels being added to or removed from the permit, so the Department can make the appropriate changes to the Retrieval Permit.

A Retrieval Permit Fee and Retrieval Permit Amendment Fee are required to recover Departmental costs associated with issuing Retrieval Permits and conducting oversight of subsequent retrieval operations. Additional information regarding these fees is provided in Table 1 ([Page 16](#)).

Subsection (d): Designated Retrievers

Individuals authorized to retrieve lost or abandoned traps under a Retrieval Permit are considered Designated Retrievers. This subsection requires the Retrieval Permittee to ensure that each Designated Retriever holds a commercial fishing license, is in good standing with the Department, has participated in a commercial trap fishery in any of the previous three calendar years, and has access to a commercial pump necessary for the retrieval of traps stuck in soft-bottom habitats. No more than 10 Designated Retrievers and 10 vessels may be authorized under a given Retrieval Permit, and the list of Designated Retrievers or vessels may be amended by submitting a Retrieval Permit Amendment to the Department.

Rationale

This subsection is necessary to establish the minimum qualifications for an individual operating under a Retrieval Permit and the number of individuals and vessels who can operate under a single Retrieval Permit. To minimize Department administrative costs, Retrieval Permittees would be responsible for ensuring that the Designated Retrievers operating under their permits are capable of competently retrieving lost and abandoned gear. Based on these requirements in this subsection, Designated Retrievers are presumed to be familiar with the safe operation of trap gear, able to distinguish and selectively retrieve commercial Dungeness crab trap gear, and able to dislodge silted-in traps from soft-bottom environments. Requiring Designated Retrievers to be commercial fishermen in good standing with the Department is necessary due to the nature of retrieving lost properties.

Specifying a maximum number of Designated Retrievers and vessels who can be

authorized under a single Retrieval Permit, and keeping that number limited to 10 or less, will allow close oversight of retrieval activities by the Retrieval Permittee. Scoping conversations with pilot program participants suggest they are unlikely to include more than 10 individuals or vessels on their permit.

Subsection (e): Trap Retrieval Logbooks

This subsection requires Retrieval Permittees to ensure the logbooks of its Designated Retrievers are kept up-to-date. The Trap Gear Retrieval Logbook (DFW1059, New ~~04/23/19~~ 04/25/19) and its instructions are incorporated by reference in the proposed regulations. Designated Retrievers are required to record details regarding the retrieval trip (vessel used, retrieval permit they are operating under, name of the Designated Retriever, port where the traps are brought back, and trip start and end date) and the retrieved traps (retrieval date and location, ownership and permit information, and whether retrieval costs need to be reimbursed by the Department). Logbooks must be kept on the vessel during all trips which include gear retrieval operations, and a new page must be used for each separate trip. Logbook sections regarding the trip and retrieved traps must be completed before any individual disembarks from the vessel. Prior to submitting the logbook to the Department by the specified date, requests for Department reimbursement due to nonpayment by the Responsible Vessel Permitholder must be indicated. The logbook also includes an optional comments section, one for notes regarding the retrieved trap and the other for notes regarding the overall retrieval trip. Logbooks must be signed before being submitted.

Rationale:

Retrieval Permittees and their Designated Retrievers will be able to download and print the logbook from the Department's website, which will ensure they are easily available and reduce administrative costs to the Department from printing and mailing copies of the logbook.

A logbook detailing retrieval activities is required so the Department can review activities conducted under the program, identify issues with program operation which may require adjustments through future rulemaking actions, and build a clear record should a Responsible Vessel Permitholder later contest Department actions to assess a Department Trap Fee or suspend their Dungeness crab vessel permit. The information provided in the logbook will also help the Department analyze where, at what depths, and under what conditions traps are lost and develop strategies to prevent future trap loss.

Requiring the identity of the vessel and Designated Retriever, as well as the Retrieval Permit the Designated Retriever is operating under, will allow the Department to confirm that retrieval operations documented in the logbook were duly authorized. Requiring the start and end dates of the trip will allow the Department to analyze the range of gear recovered during a given trip and ensure retrieval operations can be cross-referenced to Law Enforcement Division

notes on retrieval activities. Requiring the port where the retrieved gear was delivered to the Retrieval Permittee will allow the Department to assess the scale of retrieval operations and ensure accountability.

Requiring the Designated Retriever to document the date each trap was retrieved will allow the Department to assess compliance with the specified timeframe for ~~sending the certified letter~~ making initial contact with the Responsible Vessel Permitholder as required under subsection (h), as well as assessing how many traps can be retrieved on a given day. Permit and ownership information on the buoy and trap tags will allow the Retrieval Permittee and Department to identify the Responsible Vessel Permitholder who should be contacted regarding the retrieved traps. Recording the location (both depth and GPS coordinates) will allow the Department to report on the progress of the program and determine areas with high densities of lost gear which may present an increased risk for whale entanglements. The reimbursement checkbox is necessary to inform the Department of whether to process a payment to the Retrieval Permittee as specified in subsection (i) and levy a Department Trap Fee against the Responsible Vessel Permitholder pursuant to subsection (j). The optional information, both for specific traps and the overall trip, takes advantage of a Designated Retriever's on-the-water expertise to provide any additional information that may enhance the Department's understanding of where, and under what conditions, traps are lost.

Designated Retrievers are required to record information regarding the retrieval trip and the retrieved traps prior to any individual disembarking from the vessel. This requirement is consistent with regulations regarding completion of Commercial Passenger Fishing Vessel logbooks (Section 190(c)(1), Title 14, CCR) and will reduce errors by limiting the time between completion of the retrieval activities and their documentation in the logbook. An exception is required for the outcome of discussions with the Responsible Vessel Permitholder regarding payment and return of the retrieved trap, as the outcome of such contact will not be known until after the trip is completed.

Documenting each retrieval trip on a separate logbook page will enable Designated Retrievers to give the logbook page(s) to the Retrieval Permittee directly following the completion of a retrieval trip, ensuring the Retrieval Permittee is then able to contact the Responsible Vessel Permitholder as specified in subsection (h). It will also increase the clarity of retrieval operation recordkeeping.

Retrieval logbooks must be postmarked to the Department between October 22 to November 1 to ensure the Department receives the logbook information in time to process reimbursements and determine if trap fees are owed to the Department. A range of dates to postmark the logbooks gives the Retrieval Permittee flexibility in submitting the logbook while still ensuring the Department receives the logbooks in a timely fashion.

Subsection (f): Trap Retrieval Operations

This subsection outlines the requirements of trap gear retrieval operations and specifies the start and end of the gear retrieval season. Only gear with a commercial Dungeness crab buoy tag may be retrieved. To the extent practicable, both the trap and any attached lines or buoys must be retrieved.

A Designated Retriever must possess a legible copy of the Retrieval Permit that he/she is covered by while engaged in or transiting from a retrieval operation.

Retrieved trap gear must be stored in a secure location until either returned to the Responsible Vessel Permittee or the Retrieval Permittee freely disposes of the gear, as specified in subsection (h)(4). Designated Retrievers and Retrieval Permittees should avoid additional physical damage to the retrieved trap gear and may not remove markings such as buoy and trap tags until it has been documented in the Trap Gear Retrieval Logbook and processed as described in subsection (h).

The Department may conduct unannounced visits or other inspections to ensure compliance with the requirements of this section. A Designated Retriever must notify the Department Law Enforcement Division (LED) of any traps found inside areas where Dungeness crab fishing is prohibited, such as state marine reserves. Such traps may not be retrieved without specific prior authorization from LED.

Rationale

Specifying that retrieval operations may not begin until 15 days after the commercial Dungeness crab fishing season closes pursuant to Section 8276 of the Fish and Game Code allows a sufficient window, if unforeseen circumstances prevent retrieval by the end of the commercial fishing season, for a Responsible Vessel Permitholder to collect gear prior to it being declared lost or abandoned and subject to retrieval. The September 30th end to the retrieval season ensures that retrieval operations, and subsequent contact of the Responsible Vessel Permitholder, are completed sufficiently in advance of the next commercial Dungeness crab season. While the trap gear being retrieved is defined to include both the trap and any attached lines or buoys, hazardous ocean or boat operation conditions may prevent retrieval of all identified gear; thus, the requirement to retrieve attached lines or buoys to the extent “practicable” gives Designated Retrievers needed flexibility.

Section 9002.5 of the Fish and Game Code limits the scope of the proposed program to commercial Dungeness crab gear. Specifying retrieved gear must have a buoy tag issued pursuant to Section 8276.5 of the Fish and Game Code ensures retrieval operations are limited to commercial Dungeness crab gear.

Designated Retrievers are required to maintain a copy of the Retrieval Permit they are operating under onboard the vessel when conducting retrieval operations so LED officers can verify retrieval operations when encountering

vessels during patrol operations.

Once trap gear has been retrieved, it must be stored in a secure facility to minimize the potential for traps to be damaged or stolen prior to the Responsible Vessel Permittee being able to recover their trap gear. Requiring the retention of buoy tags ensures that Responsible Vessel Permitholders who pay the Retriever Trap Fee and collect their traps pursuant to subsection (h) also recover the buoy tag needed to fish that trap in the next season. If gear is recovered after the Responsible Vessel Permitholder has already submitted a between-season tag replacement request pursuant to Section 132.4(b), Title 14, CCR, then the recovered buoy tag would be invalid.

Authorization for Department personnel to inspect and audit the facilities, vessels, and documentation associated with retrieval operations is necessary to ensure the requirements of this program are met.

Designated Retrievers must notify LED of any commercial Dungeness crab trap found inside areas where Dungeness crab fishing is prohibited. Furthermore, such traps may not be retrieved without specific permission from LED. Specifying that the contact must occur through the CalTIP program allows LED to leverage an existing program, rather than needing to monitor an additional line of communication. Traps found inside those areas may lead to further investigations and potentially prosecutions, where preserving the evidence chain of custody is vital. LED must be made aware of such traps and Designated Retrievers may retrieve these traps only if LED has determined retrieval will not interfere with enforcement actions.

Subsection (g): Ground for suspension or revocation of Retrieval Permits

This subsection states that a Retrieval Permit may be suspended or revoked if a Retrieval Permittee or any of its Designated Retrievers violates any California regulation, California statute, local ordinance, federal regulation, federal code, or any other terms on the Retrieval Permit. Should a Retrieval Permit be suspended or revoked by the Department, the Retrieval Permittee must turn over all documents produced under the requirements of this program, as well as any retrieved gear which has not yet been returned to the Responsible Vessel Permitholder, as directed by the Department.

Rationale

Unlike the trap retrieval operations authorized under Section 132.2, Title 14, CCR, participation in the voluntary program established in this Section entitles Retrieval Permittees to compensation for costs incurred during retrieval operations. The Department will rely upon the documentation provided by Retrieval Permittees when taking action against Responsible Vessel Permitholders as specified in subsection (j). To ensure accountability and build trust among the Department, Dungeness crab vessel permitholders, and participants in the Trap Gear Retrieval Program, Retrieval Permittees and their

Designated Retrievers are required to comply with the mandates of this program and other existing laws. Suspension or revocation of the Retrieval Permit would prevent former Designated Retrievers from conducting additional on-the-water retrieval operations. The former Retrieval Permittee must turn over their records and any stored gear as specified by the Department to allow the Department to ensure the gear is properly returned to the Responsible Vessel Permitholder and so Law Enforcement Division staff can pursue appropriate enforcement actions.

Subsection (h): Retriever Trap Fee

This subsection makes specific the statutory provision in Fish and Game Code Section 9002.5 that Responsible Vessel Permitholders are liable for a Retriever Trap Fee for any trap gear retrieved under the authority of this Section. Responsible Vessel Permittees shall be identified based on buoy tags, buoy, or trap tags present on the retrieved trap gear. The per-trap fee may be freely negotiated by both parties. ~~A letter from the Retrieval Permittee to~~ must contact the Responsible Vessel Permitholder via text, email or certified letter regarding the retrieved trap gear ~~must be sent via certified mail and postmarked~~ within one week of the trap gear being retrieved. Retrieval Permittee must contact all Responsible Vessel Permitholders with outstanding Retriever Trap Fees via certified mail postmarked by October 6. Such records must be maintained for one year. Title for the retrieved trap gear will be transferred once the Responsible Vessel Permitholder has paid the Retriever Trap Fee and taken physical possession of their gear, and both the Retrieval Permittee and the Responsible Vessel Permitholder must maintain a copy of a receipt documenting the transaction. If the Retriever Trap Fee has not been paid, or the Responsible Vessel Permitholder has not retrieved their trap gear, by October 21, the Retrieval Permittee may freely dispose of the trap gear, and must send the buoy tags to the Department with the logbook documenting that trap's retrieval.

Rationale

To ensure that operations of the Retrieval Program occur without undue Department involvement, this subsection authorizes Retrieval Permittees to work directly with Responsible Vessel Permitholders regarding return of retrieved gear and determination of appropriate compensation. Under Section 9002.5(b)(4) of the Fish and Game Code, the Department can assist by sharing contact information of Responsible Vessel Permitholders. The Responsible Vessel Permitholder would primarily be identified from the buoy tag, which contains the Dungeness crab permit number. If a buoy tag is unreadable due to wear or fouling by marine organisms, other components of the retrieved trap gear could assist with identification of the Responsible Vessel Permitholder. Other identifying markers on the trap gear include the license number of the operator of the trap as indicated on the main buoy, pursuant to Section 9006 of the Fish and Game Code, as well as the trap owner's phone number located on a trap tag attached to the trap itself as required in Section 132.1(a), Title 14, CCR.

Retrieval Permittees are required to contact Responsible Vessel Permitholders

within one week of retrieving the gear to ensure that Responsible Vessel Permitholders are made aware of the retrieval in a timely fashion.

Based on comments submitted during the original 45-day public comment period, the Department has amended the provisions related to contacting the Responsible Vessel Permitholder. Initial contact may be made by text, email or certified letter. Since a given Responsible Vessel Permitholder's traps may be retrieved multiple times during the season, requiring use of a certified mail letter within one week of each retrieval trip being completed is likely to result in multiple letters being sent to a given Responsible Vessel Permitholder.

Additionally, pilot program participants report high compliance by Responsible Vessel Permitholders, with less than 15% of contacted fishermen refusing to participate in the voluntary program. The Department anticipates a similar, or higher, level of compliance with the formal program established by this Section. Initial use of more informal contact methods, and only requiring use of certified mail to provide a final notice to non-compliant Responsible Vessel Permitholders, would alleviate unnecessary costs to Retrieval Permittees. Requiring certified letters to any Responsible Vessel Permitholders with outstanding Retriever Trap Fees by October 6 gives final notice to the Responsible Vessel Permitholder that they risk referral to the Department if the Retriever Trap Fee is not paid.

Specifying the minimum details which must be included in ~~that~~ each contact is necessary to ensure that Responsible Vessel Permitholders are made aware of their obligations under this Section and are appropriately incentivized to engage with the Retrieval Permittee regarding payment of the Retriever Trap Fee. ~~Requiring use of certified mail and~~ retention of the communication record for at least one year (beyond the Retrieval Permit expiration date) creates an auditable paper trail that the Department can review in case of a dispute between the Retrieval Permittee and the Responsible Vessel Permitholder. The Department anticipates any such dispute should arise within one calendar year, as the Department would be contacting Responsible Vessel Permitholders and/or denying permit renewals within that timeframe.

Specifying that the title for retrieved trap gear is transferred upon payment of the Retriever Trap Fee and physical possession of the trap gear clarifies ownership during the transfer process. Requiring the Responsible Vessel Permitholder to physically collect the trap gear, which includes the buoy tags affixed to the trap gear at the time it was retrieved, by October 21 relieves the Retrieval Permittee of the cost of returning the trap gear and allows them to dispose of the trap so that excessive storage fees are not incurred thereafter. A typical Dungeness crab vessel permitholder will be preparing for the upcoming season by this time, and thus the deadline for collecting the traps does not pose an undue burden on a reasonable fishery participant. Requiring the production and retention of receipts documenting payment of the Retriever Trap Fee provides both parties with a written record should payment later be disputed.

Requiring return of buoy tags affixed to traps which were not returned to the

Responsible Vessel Permitholder allows Department staff to review any requests for between season replacement tags and ensures the tags are not unlawfully used during the following commercial Dungeness crab season.

Subsection (i) Reimbursement

In this subsection, the amount the Department shall compensate a Retrieval Permittee should the Responsible Vessel Permitholder fail to pay the Retriever Trap Fee is set at \$125.00 per trap. Per the instructions in the Trap Gear Retrieval Logbook, which are incorporated by reference in subsection (e), the Retrieval Permittee must submit a copy of the certified letter required under subsection ~~(h)(2)~~ (h)(3) for each trap where they request Department reimbursement.

Rationale

Gear recovery operations will result in a variety of costs for the Designated Retriever and the Retrieval Permittee, including fuel, crew, storage of retrieved traps, certified mailings, and other administrative tasks. Payment for retrieved gear is necessary to incentivize participation in this program. Given that the cost to purchase a new trap, without line and buoys, is at least \$200, a freely negotiated Retriever Trap Fee could exceed the fixed sum specified here. This will encourage Retrieval Permittees to undertake reasonable efforts to negotiate with the Responsible Vessel Permitholder. However, in the case that a Retrieval Permittee and Responsible Vessel Permitholder are unable to agree on a Retriever Trap Fee, this subsection will ensure that a Retrieval Permittee's costs are sufficiently reimbursed.

Subsection (j) Notification and Deadline of Department Trap Fee and Non-Renewal of Dungeness crab vessel permit

This subsection reiterates that logbooks submitted to the Department will indicate all trap gear where a Responsible Vessel Permitholder did not pay the Retriever Trap Fee, and the Retrieval Permittee therefore requests reimbursement from the Department. For such trap gear, the Department will assess a Department Trap Fee on the Responsible Vessel Permitholder. By January 15 following the date the trap gear was retrieved, the Department Trap Fee will be considered late and renewal or transfer of the Dungeness crab vessel permit will be suspended until all owed Department Trap Fees are paid. Suspended permits will then be subject to the renewal restrictions in Section 7852.2 of the Fish and Game Code.

Rationale

Section 9002.5 requires the Department to assess a per-trap fee on Responsible Vessel Permitholders who do not pay a Retrieval Permittee for their retrieved trap gear. The fee will allow the Department to reimburse the Retrieval Permittee, as

specified in subsection (i), and defray administrative costs associated with the Responsible Vessel Permitholder's non-payment of the Retriever Trap Fee. Preventing the Responsible Vessel Permitholder from renewing or transferring their permit until all owed Department Trap Fees are paid will motivate timely payment of the Department Trap Fee. If the fees are not paid, and the permit remains suspended past the deadline established in Fish and Game Code Section 7852.2, the Department must then deny any subsequent request for permit renewal. This provides a clear consequence for Responsible Vessel Permitholders who obstruct the operations of the gear retrieval program.

Amend Section 705, Commercial Fishing Applications, Permits, Tags and Fees to establish fees:

- 705(a)(9): \$377.75 Lost or Abandoned Commercial Dungeness Crab Trap Gear Retrieval Permit Application Fee
- 705(a)(10): \$102.75 Lost or Abandoned Commercial Dungeness Crab Trap Gear Retrieval Permit Amendment Fee
- 705(c)(8): \$408.50 Lost or Abandoned Department Trap Fee

Rationale

The Department has a duty to recover all reasonable costs pursuant to Fish and Game Code Section 1050(e). In addition, Section 9002.5 states that the Department shall set the Retrieval Permit fee and the per-trap fees levied on Dungeness crab vessel permitholders at a level which fully recovers any incurred costs.

Issuance of each Retrieval Permit, as well as any subsequent amendment, and oversight of retrieval activities will incur administrative costs. Staff will create and maintain an informational web page and respond to requests for information. Permit applications will need to be reviewed for completeness and potential enforcement concerns. Each applicant's data must be keyed into the Automated License Data System. Payment will be processed through the point of sale terminal and the permit printed and mailed to approved applicants. Department staff may need to share contact information for Dungeness crab vessel permitholders with Retrieval Permittees per Fish and Game Code Section 9002.5(b)(4). Additionally, on-the-water and land-based enforcement efforts will be needed to ensure compliance with the regulations established under this section. Staff will need to review, enter and analyze logbook data, and track buoy tags submitted with logbooks. Periodic program reviews will be needed to ensure the current fee covers incurred costs. The duties described will require work by Environmental Scientists, Associate Governmental Program Analysts, and Wildlife Officers within the Department's Marine Region, License and Revenue Branch, and Law Enforcement Division. Table 1 summarizes the expected costs associated with processing each Retrieval Permit and Retrieval Permit Amendment and administering the retrieval program.

Table 1. Retrieval Permit and Retrieval Permit Amendment Fee Determination

| Item | Classification | Number of Hours | Hourly Wage + Benefits | Overhead | Cost |
|--|--|-----------------|------------------------|----------|----------|
| Permit Application | Associate Governmental Program Analyst | 1.00 | \$51.96 | 24.32% | \$64.60 |
| | Environmental Scientist | 1.50 | \$58.69 | 24.32% | \$109.45 |
| | Wildlife Officer | 3.00 | \$54.62 | 24.32% | \$203.70 |
| Permit Application Fee = \$377.75 | | | | | |
| Permit Amendment | Associate Governmental Program Analyst | 0.50 | \$51.96 | 24.32% | \$32.30 |
| | Environmental Scientist | 0.50 | \$58.69 | 24.32% | \$36.48 |
| | Wildlife Officer | 0.50 | \$54.62 | 24.32% | \$33.95 |
| Permit Amendment Fee = \$102.75 | | | | | |

Sources: 2018-19 CalHR salary schedule, 2018-19 CDFW benefit and overhead rates.

Should a Responsible Vessel Permitholder not pay the Retriever Trap Fee, they would be subject to a Department Trap Fee. To fully recover Department costs, that fee must include the \$125 the Department will pay to the Retrieval Permittee as well as sufficient funds to cover Department administrative costs. Department staff will need to issue payments to Retrieval Permittees, notify Responsible Vessel Permitholders about owed fees and update customer profiles for Responsible Vessel Permitholders should their non-payment of Department Trap Fees result in the suspension of the renewal or transfer of their Dungeness crab vessel permit. Once Department Trap Fees have been paid, Department staff will need to process received payments and update customer profiles. Periodic program reviews will be needed to ensure the current fee covers incurred costs. The duties described will require work by Environmental Scientists and Associate Governmental Program Analysts within the Department’s Marine Region and License and Revenue Branch. Table 2 summarizes the expected costs associated with levying a Department Trap Fee.

Table 2. Department Trap Fee Determination.

| Item | Classification | Number of Hours | Hourly Wage + Benefits | Overhead | Cost |
|---------------------------------------|--|-----------------|------------------------|----------|----------|
| Department Staff | Associate Governmental Program Analyst | 1.00 | \$51.96 | 24.32% | \$64.60 |
| | Environmental Scientist | 3.00 | \$58.69 | 24.32% | \$218.89 |
| Payment to Retrieval Permittee | | | | | \$125 |
| Department Trap Fee = \$408.50 | | | | | |

Sources: 2018-19 CalHR salary schedule, 2018-19 CDFW benefit and overhead rates.

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

~~Authority: Section 9002.5, Fish and Game Code.~~

~~Reference: Sections 7852.2, 8276, 8276.5, 9002.5 and 9006, Fish and Game Code.~~

Section 132.2:

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

Reference: Sections 7852.2, 8276, 8276.5, 9002.5 and 9006, Fish and Game Code.

Section 132.7:

Authority cited: Section 9002.5, Fish and Game Code.

Reference: Sections 7852.2, 8276, 8276.5, 9002.5 and 9006, 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.

- (c) Specific Technology or Equipment Required by Regulatory Change: None
- (d) Identification of Reports or Documents Supporting Regulation Change:

Senate Bill 1287, 2016, McGuire:

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB1287

Proposed California Department of Fish and Wildlife Dungeness Crab Gear Retrieval Program Scoping Report conducted by California Lost Fishing Gear Recovery Project, September 2017:

http://www.opc.ca.gov/webmaster/ftp/project_pages/dctf/meeting-7/Final-report-to-CDFW-on-lost-D-gear-scoping-project-9-12-17.pdf

Senate Bill 1309, 2018, McGuire:

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1309

Dungeness Crab Task Force Meeting Summary, June 2018:

http://www.opc.ca.gov/webmaster/media_library/2009/04/DCTF_MeetingSummary_June2018_FINAL.pdf

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

Dungeness Crab Task Force meetings where the proposed regulations were discussed:

- March 14, 2017, teleconference
- April 11, 2017, teleconference
- June 5, 2018, Ukiah CA

State public meetings where the proposed regulations were discussed:

- October 7, 2018, Morro Bay, CA
- October 8, 2018, Moss Landing, CA
- October 8, 2018, Half Moon Bay, CA
- October 9, 2018, San Francisco, CA
- October 10, 2018, Bodega Bay, CA
- October 11, 2018, Eureka, CA
- October 11, 2018, Crescent City, CA

At the June 2018 Dungeness Crab Task Force Meeting, the DCTF reviewed and provided recommendations on the proposed regulations. At that time, the DCTF stated the review required under Section 9002.5(b)(6) had been completed, and the DCTF did not require an additional opportunity to provide recommendations.

On December 17, 2018 the Department provided formal notice to California tribal governments regarding the development of the proposed regulations and requested preliminary input by January 18, 2019. As of the date on this ISOR, no requests for government-to-government consultation have been received.

Department staff have also reached out to participants in the gear retrieval pilot programs and other interested parties to solicit input on specific elements of the proposed program.

Public Hearing April 17, 2019. The Department's initial proposal was open to the public and discussion was made. The Department elected to re-notice this proposal and bring forward an amended Dungeness Crab Trap Retrieval regulation.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Department staff originally developed a top-down framework that placed the Department directly in charge of administering, monitoring, and paying for retrieval operations. The program would require dedicated staff responsible for all administrative aspects of the program as well as conducting site visits to locations where traps are landed or stored. The

resulting costs would be substantial, and the lack of local knowledge would hinder efficiency of the gear retrieval program. Pilot gear retrieval programs operating under the authority of Section 132.2, Title 14, CCR have demonstrated that a locally-administered program is tenable, and the Dungeness Crab Task Force has expressed support for avoiding unnecessary Department involvement with day-to-day operations of the gear retrieval program.

(b) No Change Alternative:

Without the proposed regulations, the lost or abandoned commercial Dungeness crab trap gear retrieval program mandated by the legislature would not be implemented.

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

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 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 from 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; enforce the program in the field; and reimburse Retrieval Permittees for non-payment by a Responsible Vessel 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.

VII. Economic Impact Assessment:

The proposed regulations are undertaken by the Department to fulfill the intent of the Legislature (McGuire, 2018, SB1309). Lost or abandoned trap gear negatively impacts the aesthetics, ecology, and navigability of coastal waters. The proposed gear retrieval program is designed to be cost-effective by keeping the operation and most of the administration of the program at the local level. Additionally, the cost of retrieving lost trap gear is expected to be less than the purchase price of a new trap, lines and buoys. The program is anticipated to benefit the commercial Dungeness

crab fishery by enabling the return of lost or abandoned trap gear to fishermen at a cost lower than replacing the gear. Overall, the effective removal of derelict crab trap gear is expected to benefit the economy of the state.

- (a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State: The proposed action is anticipated to prompt some additional job opportunities associated with the gear retrieval program after the end of the Dungeness crab season. It is difficult to anticipate the number of new jobs within the state until the program is in place for at least one year. The proposed action is not anticipated to result in the elimination of jobs.
- (b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State: The gear retrieval program may enable the creation of some new businesses. The proposed action is not anticipated to result in the elimination of existing businesses.
- (c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State: The gear retrieval program may enable the expansion of existing businesses currently doing business within the state.
- (d) Benefits of the Regulation to the Health and Welfare of California Residents: The proposed action is not anticipated to directly benefit the health and welfare of California residents.
- (e) Benefits of the Regulation to Worker Safety: The proposed action is not anticipated to directly benefit worker safety.
- (f) Benefits of the Regulation to the State's Environment: The proposed action should benefit the State's environment by the removal of gear that could be hazardous to marine life.
- (g) Other Benefits of the Regulation: The program is anticipated to benefit the commercial Dungeness crab fishery by returning lost or abandoned trap gear to fishermen at a cost lower than replacing the gear.