

TITLE 14. DEPARTMENT OF FISH AND WILDLIFE
NOTICE OF PROPOSED ACTION
June 21, 2019

NOTICE IS HEREBY GIVEN that the Department of Fish and Wildlife (Department) proposes to adopt regulations to amend sections 122.1, 125, 126.1, 180.1 and 180.5, Title 14, California Code of Regulations (CCR), implementing a standardized gear marking program described in Section 9005 of the Fish and Game Code (FGC). FGC Section 9005 directs the Department to implement standardized gear marking requirements by January 1, 2020. This timeline has been accelerated to November 15, 2019 due to a lawsuit settlement agreement. The proposed "Standardized Commercial Trap Marking Program" (Marking Program) would help with the identification of fishing gear if it is entangled with marine life, allowing the State to direct resources to those fisheries with the greatest contribution to marine life entanglement. The proposed Marking Program would improve and expand upon existing buoy markings required by regulation and statute, affecting six commercial trap fisheries: Spiny Lobster, Rock Crab, Tanner Crab, Spot Prawn, Coonstripe Shrimp, and Nearshore Finfish (e.g., California Sheephead, Cabezon).

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

PUBLIC HEARING

A public hearing is scheduled as follows:

Date: Tuesday, August 6, 2019
Time: 10 a.m. to 12 p.m.

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

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 via mail, or e-mail, no later than **5:00pm on August 6, 2019**, to the contact as follows:

California Department of Fish and Wildlife, Regulations Unit
Attn: Ona Alminas, Sr. Environmental Scientist
1416 9th Street, Room 1342-A
Sacramento, CA 95814
Email: Regulations@wildlife.ca.gov

AUTHORITY AND REFERENCE:

Section 122.1:

Authority: Sections 7075 and 7078, Fish and Game Code.

Reference: Sections 7050, 7055, 7056, 8250.5, 9002, 9005 and 9010, Fish and Game Code.

Section 125:

Authority: Sections 1050 and 8282, Fish and Game Code.

Reference: Sections 1050, 7852.2, 7857, 7858, 8043, 8047, 8250.5, 8275, 8282, 8284, 9000, 9001, 9002, 9005, 9006 and 9011, Fish and Game Code.

Section 126.1:

Authority: Sections 713, 1050, 5508, 7090, 7857, 8026, 8282 and 9005, Fish and Game Code.

Reference: Sections 1050, 1052, 5508, 7050, 7051, 7055, 7056, 7058, 7850, 7857, 7881, 8026, 8031, 8040, 8041, 8042, 8043, 8046, 8051, 8250.5, 8282, 8284, 8834, 9000, 9001, 9002, 9003, 9004, 9005, 9006, 9007, 9008 and 9011, Fish and Game Code.

Section 180.1:

Authority: Sections 711 and 8591, Fish and Game Code.

Reference: Sections 710.7, 711, 8140, 8590, 8591, 8593, 8594, 8595, 8842, 9000, 9001, 9004-9008 and 9015, Fish and Game Code.

Section 180.5:

Authority: Sections 9003, 9005 and 9006, Fish and Game Code.

Reference: Sections 9002, 9003, 9005, 9006, 9007 and 9008, Fish and Game Code.

Informative Digest/Policy Statement Overview

The California Department of Fish and Wildlife (Department) is tasked with developing a standardized system of marking commercial trap gear through the implementation of Senate Bill 1309 (SB 1309; Fisheries Omnibus Bill of 2018, McGuire). The Department proposes amendments to sections 122.1, 125, 126.1, 180.1, and 180.5, Title 14, California Code of Regulations (CCR) to implement the “Standardized Commercial Trap Marking Program” (Marking Program) pursuant to Fish and Game Code (FGC) Section 9005. The goal of this program is to establish a standardized framework for marking commercial fishing gear to better identify the commercial trap fisheries involved in marine life entanglement events. The proposed regulations would create a standardized marking system for the Spiny Lobster, Rock Crab, Tanner Crab, Spot Prawn, Coonstripe Shrimp, and Nearshore Finfish commercial fisheries. Three other fisheries, Dungeness Crab, Hagfish, and Sablefish commercial trap fisheries, are not part of the proposed Marking Program at this time.

Proposed Regulations

The Department developed the proposed Marking Program in Section 180.5, Title 14, California Code of Regulations (CCR) which improves and expands upon existing buoy markings required by regulation and statute pursuant to FGC Section 9005. Under the proposed Marking Program, every trap or string of traps must be attached to at least one buoy that is marked with a number that identifies the operator of the trap (“Identification Number”). This number is usually the commercial fishing license identification number of the trap’s operator. Furthermore, every buoy must be marked on multiple sides with a letter that identifies to which fishery the gear belongs (“Identification Letter”).

The following summarized changes are part of this regulatory proposal:

Amend **Section 122.1** by replacing specific requirements listed in subsection (b) with a reference to Section 180.5, Title 14, CCR.

Amend **Section 125** by replacing subsection (b)(2) with a reference to Section 180.5, Title 14, CCR. The subsection currently requires all traps to be marked with a buoy.

Amend **Section 126.1** by removing references to requirements in FGC sections 9006 and 9007 in subsection (a)(4)(F), and replace with a reference to Section 180.5, Title 14, CCR.

Amend **Section 180.1** by replacing specific marking requirements in subsection (d) with a reference to Section 180.5, Title 14, CCR.

Establish **subsection 180.5 (a)** by removing the reference to FGC Section 9006 requiring every trap to be marked by a buoy and moving other parts of the current Section 180.5 to different, and new, subsections.

Add **Subsection 180.5 (b)** which requires participants in commercial trap fisheries to mark at least one surface buoy attached to their trap gear with an Identification Number, and that all buoys must be marked with fishery-specific Identification Letters, as described below:

Fishery & Gear Type	Identification Number	Identification Letter
Lobster Trap	operator's commercial fishing license identification number	P
Rock Crab Trap	operator's commercial fishing license number	X
Tanner Crab Trap	vessel's California boat registration number	T
Spot Prawn Trap	operator's commercial fishing license identification number	S
Coonstripe Shrimp Trap	operator's commercial fishing license identification number	C
Nearshore Finfish Trap	operator's commercial fishing license identification number	Z

Add **Subsection 180.5 (c)** which specifies the minimum size for Identification Numbers.

Add **Subsection 180.5 (d)** which specifies the new minimum letter size of 3 inches in height for Identification Letters, doubling the current height requirement.

Add **Subsection 180.5 (e)** which reorganizes the existing requirement that all buoy identification be legible and in a color contrasting with the buoy into a new subsection.

The Department is required to recover all reasonable administrative and implementation costs associated with the Marking Program, pursuant to FGC Section 9005. However, due to the program's novelty and relative simplicity, there are anticipated to be minimal administrative and implementation costs incurred by the Department.

BENEFITS OF THE PROPOSED REGULATIONS:

The regulatory proposal is designed to provide a uniform standard of marking commercial traps pursuant to the directive of FGC Section 9005. The proposed Marking Program would help with the identification of fishing gear entangled with marine life, allowing the State to direct resources to those fisheries with the greatest contribution to marine life entanglement.

EVALUATION OF INCOMPATIBILITY WITH EXISTING REGULATIONS:

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated to the Department the authority to adopt the proposed Marking Program (FGC Section 9005). 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 regulation.

DOCUMENTS RELIED UPON –

Pacific States Marine Fisheries Commission and National Oceanic Atmospheric Administration (2018). Forensic Review Workshop Report- Reviewing Gear Involved in West Coast Whale Entanglement (Available at: <http://habitat.psmfc.org/wp-content/uploads/2018/10/Forensic-Review-Workshop-Report.pdf>).

DOCUMENTS INCORPORATED BY REFERENCE – None.

IMPACT OF THE REGULATORY ACTION/ RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Fishery participants would incur minimal time and material costs from adding additional branding and/or paint to their existing buoys. A few who participate in multiple fisheries may find it more time-efficient to purchase additional buoys to keep marked for other trap fisheries that they participate in, rather than re-paint and cross-purpose one set of buoys for other trap fishery seasons.

- (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 Department does not anticipate any impacts on the creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses, or the expansion of businesses in California, since the proposed regulation would only lead to a minor modification in existing commercial fishing operations. The proposed regulation would not directly benefit the health and welfare of California residents, nor worker safety. The proposed regulation would help the Department in developing appropriate measures for managing and reducing marine life entanglements, and thus would benefit the State's environment.

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

The agency is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action beyond the possible cost of purchasing of new additional paint and the time

to mark the gear, or in some case cases, purchasing new or additional buoys.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

If future information indicates currently unanticipated administrative and implementation costs to the Department, then pursuant to FGC Section 9005, the Department will determine and adjust the fee as necessary. No costs or savings in Federal funding to the State are anticipated.

- (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.

EFFECT ON SMALL BUSINESS

The proposed regulations may affect small businesses specifically involved in the seven commercial trap fisheries, except for those who only participate in the commercial Dungeness crab trap fishery and the commercial Sablefish trap fishery.

BENEFITS TO THE STATE'S ENVIRONMENT

The proposed Marking Program would help with the identification of a fishing gear if it is entangled with marine life, allowing the State to direct resources to those fisheries with the greatest contribution to marine life entanglement. The Marking Program's proposed Identification Letter would allow the gear to be identified to a fisheries, and the proposed Identification Number would allow the gear to be identified to an individual fisherman or operator.

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 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 substance of the proposed action should be directed to:

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

The backup contact person is:

California Department of Fish and Wildlife, Marine Region
Attn: Tom Mason, Senior Environmental Scientist Supervisor
3883 Ruffin Road
San Diego, CA 92123
Phone: (858) 637-7100
Email: Tom.Mason@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 Travis Buck (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 Santa Barbara address above. As of the date this notice is published, the rulemaking file consists of:

1. Notice of Proposed Action
2. Initial Statement of Reasons
3. Proposed Text of the Regulation
4. Economic and Fiscal Impact Assessment (Form STD 399) and addendum
5. Pacific States Marine Fisheries Commission and National Oceanic Atmospheric Administration (2018). Forensic Review Workshop Report- Reviewing Gear Involved in West Cost Whale Entanglement.

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 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 Anthony Shiao (see above for further contact information). The Department would 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 checking the website at the link provided above, or contacting Anthony Shiao (see above for further contact information).