

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

Amend Sections 122.1, 125, 126.1, 180.1, & 180.5  
Title 14, California Code of Regulations  
Re: Standardized Commercial Trap Marking Program

I. Date of Initial Statement of Reasons: June 21, 2019

II. Date and Location of Scheduled Hearing:

Date: August 6, 2019

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

Time: 10:00 a.m.-12 p.m.

III. Description of Regulatory Action

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

**Background**

Senate Bill 1309 (SB 1309; Fisheries Omnibus Bill of 2018, McGuire), signed into law on September 30, 2018, amended several sections in the Fish and Game Code (FGC) that required several changes to commercial fisheries management in the State of California, particularly for the Dungeness crab fishery. Among the changes, the bill amended FGC Section 9005 (Article 1 - "Traps") requiring the California Department of Fish and Wildlife (Department) to develop regulations for standardized marking of commercial fishing gear to aid with identifying the commercial fishery responsible for marine life entanglements.

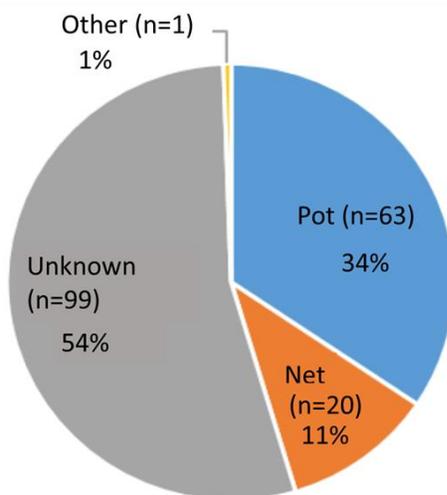
FGC Section 9005, as amended, provides for the following:

- Grants discretion to the Department in deciding which commercial fisheries would be subject to new marking requirements for traps and/or buoys;
- Requires the Department to implement the standardized gear marking requirements by January 1, 2020; and
- Gives the Department authority to establish a fee for each fishery requiring standardized gear marking, and adjust each fee to fully recover, but not

exceed, all reasonable administrative and implementation costs relating to the marking requirement.

On March 26, 2019, the Department entered into a settlement agreement with the Center for Biological Diversity concerning a lawsuit that had been ongoing since the fall of 2017. As part of the settlement agreement, the Department agreed to advance the completion date of this standardized gear marking rulemaking mandated by Section 9005 from January 1, 2020 to November 15, 2019.

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 FGC Section 9005. The goal of this program is to establish a standardized framework of marking commercial fishing gear to better identify the commercial trap fisheries involved in marine life entanglements. As reported in the *2018 Whale Entanglement Forensic Review Workshop Summary Report* (Forensic Report; Pacific States Marine Fisheries Commission (PSMFC) and National Oceanic and Atmospheric Administration (NOAA), 2018)), more than half of the confirmed large whale entanglements off the West Coast are entangled in an “unknown” gear type (Figure 1). Improved identification will help focus collaborative efforts to reduce entanglement risks, which is a high-priority issue for the Department and its partners.



**Figure 1:** The reported fishing gear type by percentage, entangled on large whales between January 2013 and June 2018 (Source: PSMFC & NOAA, 2018)

In its legislative analysis of SB 1309, the Senate Committee on Natural Resources and Water noted that standardized gear marking “will help the state and its partners, including the California Dungeness Crab Fishing Gear Working Group (Working Group), to gather important information about the origins of entanglements [...] and work to reduce entanglement risk.”

## CURRENT REGULATIONS

There are currently nine commercial trap fisheries off the coast of California: Spiny Lobster, Dungeness Crab, Rock Crab, Tanner Crab, Spot Prawn, Coonstripe Shrimp, Sablefish, Nearshore Finfish (e.g., California Sheephead, Cabezon), and Hagfish. Though some trap fisheries have specific marking requirements for buoys or individual traps listed in FGC or in Title 14, CCR, there is currently no standardized marking system across commercial trap fisheries operating off the coast of California (Table 1).

**Table 1:** Summary of Current Commercial Trap Fishery Buoy Marking Requirements for Fisheries Included in the Proposed Marking Program

Fishery	Buoy Number Requirement	Buoy Letter Requirement	Legibility
<b>Lobster</b>	Marked w/ commercial fishing license number <sup>1,2</sup>	Marked w/ letter P <sup>1,2</sup>	Numbers must be at least 1.5 in. in height and 1/4 in. in width <sup>5</sup> ; numbers must be in contrasting color <sup>2,5</sup>
<b>Rock Crab</b>	None	None	N/A
<b>Tanner Crab</b>	Marked w/ vessel's commercial boat registration number <sup>3</sup>	Marked w/ letters TC <sup>3</sup>	Numbers must be at least 2 in. in height and 1 in. in width, in line at least 1/8 in. thick <sup>3</sup> ; numbers must be in contrasting color <sup>3,5</sup>
<b>Spot Prawn</b>	Marked with commercial fishing license number <sup>4</sup>	None	Numbers must be at least 1.5 in. in height and 1/4 in. in width <sup>5</sup> ; numbers must be in contrasting color <sup>5</sup>
<b>Coonstripe Shrimp</b>	None	None	N/A
<b>Nearshore Finfish</b>	Marked w/ commercial fishing license number <sup>1</sup>	Marked w/ letter Z <sup>1</sup>	Numbers must be at least 1.5 in. in height and 1/4 in. in width <sup>5</sup> ; numbers must be in contrasting color <sup>5</sup>

1.FGC Section 9006 (2019).

3.T14 CCR Section 126.1 (2019).

5. T14 CCR Section 180.5 (2019).

2.T14 CCR Section 122.1 (2019).

4. T14 CCR Section 180.1 (2019).

Three of the nine commercial trap fisheries are not proposed for inclusion in the Marking Program: Dungeness Crab, Sablefish, and Hagfish. Since 2013, California Dungeness crab traps have been marked with standardized buoy tags, which have proven useful for identifying the gear in marine life entanglement cases. In addition to California, Oregon and Washington State require tags on Dungeness trap buoys as well. Based on analysis from the *Forensic Report* (PSMFC & NOAA, 2018), a buoy tag was observable in 38% of the reported entanglements when a buoy is present. Once a tag is observed, in 90% of the cases the presence of the tag led to the identification of the state whose Dungeness crab fishery is responsible for the

entanglement. The Sablefish fishery, on the other hand, is federally managed through the Pacific Fishery Management Council, and imposes its own gear marking requirements (Section 660.219, Title 50, Code of Federal Regulations). Hagfish traps are subject to separate regulations that require buoy markings of both the operator's commercial fishing license identification number, and the vessel commercial boat registration number. The requirements for the Hagfish fishery are related to pending regulatory changes with the Fish and Game Commission amending subsection (b) of Section 180.6, Title 14, CCR. For these reasons, the Department is not including Dungeness Crab, Hagfish, or the Sablefish commercial trap fisheries in the proposed Marking Program at this time.

## **PROPOSED REGULATIONS AND NECESSITY**

Existing marking requirements for commercial traps have not been able to provide consistent identification during marine life entanglements. Informed by the *Forensic Report* (PSMFC & NOAA, 2018) and following several discussions with NOAA staff and participants of various commercial trap fisheries, the Department developed the proposed Marking Program, which improves and expands upon existing buoy markings required by regulation and statute.

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 the fishery that the gear belongs to ("Identification Letter").

This marking proposal was determined to have the least impact on the participants of the commercial trap fisheries while still fulfilling the purpose of standardizing trap marking. Many commercial trap fisheries already require the equivalent of Identification Numbers and Identification Letters be marked on at least one buoy (Table 1), and most fishermen are already familiar with the practice. The proposed program would expand upon these requirements to improve the visibility of the markings and introduce consistency across commercial fisheries.

The Department is required to set and adjust a fee 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.

Most proposed and existing programs require the Department to conduct new activities that clearly would not occur otherwise. For example, the Dungeness Crab Trap Retrieval Program currently being proposed (Sections 132.2, 132.7, Title 14, CCR) and the Commercial Native Rattlesnake Permit regulations effective in January 2019 (Sections 42, 43, 651, 703, Title 14, CCR) involve the creation of

distinct tasks, such as reviewing and approving permit applications and auditing new permits. The Dungeness Trap Tag and Limit Program detailed in Section 132.1-132.4, Title 14, CCR, built a novel program from the ground up and requires significant, recurrent external costs (i.e. designing, procuring, ordering, receiving, inventorying, and distributing Department-issued plastic buoy tags).

In contrast to these programs, the proposed Marking Program does not incur any new work or tasks that are clearly unique to the new standardized marking requirements, and nothing else. Most commercial trap fisheries in California are already required to mark their buoys with some type of marking (e.g. commercial lobster trap buoys currently must be marked with an operator's commercial fishing license identification number, and the letter "P"). The Department will not need to purchase any tags, or undergo any contracts or inventorying, or execute an annual permit application review and approval for the gear to be marked. Thus, there is no anticipated additional administrative or implementation costs from the program.

If future information indicates currently unanticipated administrative and implementation costs, then pursuant to FGC Section 9005 the Department will determine and adjust the fee as necessary.

In addition to the establishment of the Marking Program (in Section 180.5, Title 14, CCR), the proposed regulatory amendments would also streamline reference to Section 180.5, Title 14, CCR, and remove several redundancies in the existing trap buoy marking requirements, without changing substantive requirements.

**Amend Section 122.1, Lobster Buoys and Trap Tags, with the following provision:**

This amendment replaces specific marking requirements listed in subsection (b) with a reference to Section 180.5, Title 14, CCR. Every requirement described in this subsection will be covered in the newly amended Section 180.5. This change is necessary to consolidate lobster trap marking requirements, since combining all marking requirements into a single section (Section 180.5) will streamline the regulatory structure for the Marking Program, and provide clarity to commercial lobster fishermen on what their buoy marking requirements are.

**Amend Section 125, Commercial Rock Crab Permits, with the following provision:**

This amendment replaces subsection (b)(2) with a reference to Section 180.5, Title 14, CCR. This subsection repeats the language requiring all traps to be marked with a buoy that is already specified in FGC Section 9005, therefore its presence within Section 125, Title 14, CCR is redundant and unnecessary. The subsection is replaced with a reference to Section 180.5, Title 14, CCR, which will contain all marking requirements for Rock Crab traps. This change is necessary to streamline the regulatory structure for the Marking Program and provide clarity to commercial

Rock Crab fishermen on what their buoy marking requirements are.

**Amend Section 126.1, Commercial Take of Tanner Crab, with the following provision:**

This amendment removes references to FGC sections 9006 and 9007 in subsection (a)(4)(F), as well as language regarding the use of dual letters “TC” and sizing and specifications of the lettering. This language is replaced with a reference to Section 180.5, Title 14, CCR, which will contain the new marking requirements for Tanner Crab. Describing requirements already specified in FGC Section 9006 and 9007 is redundant and unnecessary. Consolidating trap marking requirements into a single section (14 CCR Section 180.5) will streamline regulatory structure for the Marking Program and provide clarity to commercial Tanner Crab fishermen on what their buoy marking requirements are.

**Amend Section 180.1, Spot Prawn (*Pandalus platyceros*) Fishing, with the following provision:**

This amendment replaces specific marking requirements in subsection (d) with a reference to Section 180.5, Title 14, CCR, which will contain the new marking requirements for Spot Prawn. Consolidating trap marking requirements into a single section (14 CCR Section 180.5) will streamline regulatory structure for the Marking Program and provide clarity to commercial Spot Prawn fishermen on what their buoy marking requirements are.

**Amend Section 180.5, Trap Buoy Identification, with the following provision:**

Establish subsection (a)

This amendment serves to re-structure the current regulatory language in Section 180.5, Title 14, CCR, by removing the reference to FGC Section 9006 requiring every trap to be marked by a buoy Identification number, in addition to sizing and specifications of the numbering. Language requiring minimum letter size and legibility of buoy identification has been moved into new dedicated subsections of Section 180.5 to increase clarity and streamline the regulatory structure for the Marking Program.

Add Subsection (b): Identification Numbers and Identification Letters

This subsection requires participants in the affected commercial trap fisheries to mark at least one buoy attached to their trap gear with an Identification Number and requires that all buoys be marked with fishery-specific Identification Letters. The current requirement in Section 126.1, Title 14, CCR mandating Tanner Crab fishermen to mark both ends of a string with buoys and Identification Numbers will remain in effect.

This subsection will incorporate the Identification Number requirements currently in use (i.e., for Lobster, Tanner Crab, Spot Prawn, and Nearshore Finfish; see Table 1), and establish new Identification Number requirements for Coonstripe Shrimp and Rock Crab fisheries to create a uniform system that would allow the operator of trap gear to be identified (Table 2). The commercial fishing license identification number of the trap’s operator is chosen as the Identification Numbers for these two fisheries because it is the prevailing form of identification, therefore both compliance and enforcement would be more streamlined. The Identification Number proposed as a marking requirement is necessary to help improve accountability on the individual trap owner’s level and fulfills the legislature’s mandate of identifying the owner of a trap (California Senate Committee on Natural Resources and Water 2018).

Subsection (b) of Section 180.5 will also establish Identification Letter requirements. Similar to the Identification Number, an Identification Letter requirement already exists for Lobster (letter “P”), Tanner Crab (“TC”), and Nearshore Finfish (“Z”). This subsection would establish new Identification Letter requirements for Rock Crab, Spot Prawn, and Coonstripe Shrimp. (Table 2). The Tanner Crab fishery Identification Letter is proposed for change from “TC” to “T,” since two letters could create confusion, when the other trap fisheries will have only a single Identification Letter. A buoy may not be marked with more than one set of Identification Letters (e.g., a buoy cannot be marked with both “P” and “Z”), since a buoy with more than one set of Identification Letters cannot be attributed to any one fishery. The Identification Letter proposed as a marking requirement is necessary to fulfill the legislature’s mandate of being able to identify the commercial fishery involved in marine life entanglements.

**Table 2:** Proposed Identification Number and Identification Letter for the Marking Program.

<b>Fishery &amp; Gear Type</b>	<b>Identification Number</b>	<b>Identification Letter</b>
Lobster Trap	operator's commercial fishing license identification number	P
Rock Crab Trap	operator's commercial fishing license identification number	X
Tanner Crab Trap	vessel's commercial 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

The compliance deadline for the marking requirements in this subsection is set at May 1, 2020 to minimize potential mid-season impact to those commercial fisheries with season restrictions (as opposed to year-round fisheries; Table 3).

Requiring fishermen to pull gear out of the water and make modifications to mark buoys mid-season risks fisherman confusion on the water, and additional costs for the fishing community. The May 1, 2020 compliance date falls at the end of Lobster and Spot Prawn season (north of Pt. Conception), and occurs just as Coonstripe Shrimp season commences. This date provision is necessary because it would also give all affected fisheries five and a half months to make any necessary preparation to mark their buoys pursuant to the regulations as they become effective on, or before, the target November 15, 2019 date.

**Table 3:** Current fishing seasons of the affected commercial trap fisheries

<b>Fishery</b>	<b>Season</b>
<b>Lobster</b>	May be taken from first Wednesday in October to first Wednesday after March 15
<b>Rock Crab</b>	May be taken year-round
<b>Tanner Crab</b>	May be taken year-round
<b>Spot Prawn</b>	May be taken <b>south</b> of Pt. Conception from February to October
	May be taken <b>north</b> of Pt. Conception from August to April
<b>Coonstripe Shrimp</b>	May be taken from May to October
<b>Nearshore Finfish</b>	May be taken year-round

Add Subsection (c): Identification Number Dimension

This subsection specifies the minimum dimensions for Identification Number size. The minimum letter height of 1.5 inch and the minimum thickness of 0.25 inch for the lines the numbers are drawn with are maintained from existing regulations for lettering prescribed in Section 180.5, Title 14, CCR. This provision is necessary for the proposed regulation to keep these specifications for the Identification Numbers, and uniformly apply it to all trap fisheries part of the Marking Program.

Add Subsection (d): Identification Letter Dimension and Placement

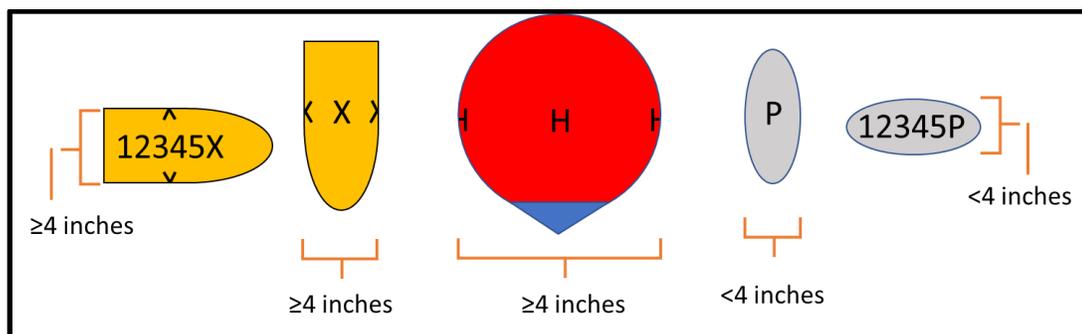
This subsection specifies the new minimum dimension size of three (3) inches in height for Identification Letters, doubling the current height requirement. The new minimum size for Identification Letters roughly corresponds to the size of a Dungeness crab buoy tag, which, when visible, have been large enough to identify commercial Dungeness crab trap gear involved in marine life entanglements. The thickness of 0.25 inch for the lines the letters are drawn with are maintained from existing regulations.

The distinction in buoy size and frequency of the marking of the Identification Letter is necessary based on field testing. Field testing of buoys marked in various configurations by Department staff demonstrated that Identification Letters may not be visible even if they are on two opposing sides of a standard bullet float with 5-

inch diameter (Figure 2). For this reason, buoys that are 4 inches in diameter or greater are proposed to have Identification Letters on four opposing sides. Buoys smaller than 4 inches in diameter would not have enough space for four 3-inch tall Identification Letters, in addition to an Identification Number, therefore with this proposal, would only need to be marked with Identification Letters on just two opposing sides (Figure 3).



**Figure 2:** Example of when marking only two opposing sides may be insufficient on buoys with a diameter larger than four (4) inches. Buoy in the photo is a standard five (5) by 11-inch bullet float. (photo credit: CDFW 2019).



**Figure 3:** Proposed marking scheme for the Marking Program shown on a depiction of different types of floats. The image of “12345” represents the Identification Number, and the single letter represents the Identification Letter.

Add Subsection (e): Legibility Requirement

The existing requirement that all buoy identification be legible and in a color contrasting with the buoy is moved to subsection (d) for organizational purposes. This subsection provides clarity to commercial fishermen on what their buoy

legibility requirements are.

(b) Goals and Benefits of the Regulation:

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 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 fishery, and the proposed Identification Number would allow the gear to be identified to an individual fisherman or operator.

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

**Section 122.1:**

Authority: Sections 7075, 7078, and 9005, Fish and Game Code.

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

**Section 125:**

Authority: Sections 1050, 8282, and 9005, 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, 8591, and 9005, 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.

(d) Specific Technology or Equipment Required by Regulatory Change:

None

(e) Identification of Reports or Documents Supporting Regulation Change:

Pacific States Marine Fisheries Commission and National Oceanic and 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>).

This Forensic report, and its appendices, helped inform the Department to draft, and justify the proposed regulations.

(f) Identification of Reports or Documents Providing Background Information

California Senate Committee on Natural Resources and Water (2018). Bill Analysis- Fishing: Fisheries Omnibus Bill of 2018.

This Senate Committee Analysis provided background on what precipitated SB1309.

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

The Department initiated scoping of the issue of gear marking from individual participants in the various commercial trap fisheries that would be affected by this rulemaking on April 9, 2019 by sending an email with questions, making phone calls, and conducting in-person conversations. Nine individuals participating in Spiny Lobster, Hagfish, Spot Prawn, and Coonstripe Shrimp trap fisheries responded with comments.

The Department took into consideration the feedback received from this initial scoping and hosted an informational webinar on May 6, 2019, to which all participants of the affected fisheries were invited to participate (over 460 commercial fishermen were invited). Department staff explained the impetus for the Standardized Commercial Trap Marking Program, and introduced the regulatory proposal presented in this document based on earlier scoping feedback. The Department opened the floor for public input during the webinar, and accepted input over email for the following two days. The feedback from the approximately 15 participants helped inform the Department of the type and amount of cost fishermen would incur based on the marking proposals, which helped the Department choose the most practical marking alternative, which also happened to be the alternative preferred by fishermen.

#### IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change:

No alternatives were identified by or brought to the attention of Department staff that would have the same desired regulatory effect. However, the Department, in consultation with NOAA and others, explored several alternatives for the Marking Program itself. The Department considered requiring fishery-specific line markings modeled after federal requirements for commercial fixed-gear fisheries on the East Coast (50 CFR Section 229.32). The Working Group has previously expressed support for this proposal, which has improved identification of trap fisheries contributing to entanglements of the highly endangered North Atlantic Right Whale. The Department considered, but ultimately rejected this option, because unlike attaching buoy tags, or re-marking buoys, affixing buoy lines with colored markings that can survive in the marine environment requires further research. Additional research is ongoing by other government agencies and non-profit partners to identify and analyze cost-effective, yet durable marking methods. While such buoy line markings can be contemplated in the future (pending research on efficacy and durability), time constraints on implementing the program by the accelerated timeline of November 15, 2019 suggests that the Department focus on a simpler approach.

The Department also considered marking all trap gear with buoy tags that would be supplied by fishery participants. This option was ultimately rejected due to logistical difficulties related to the limited types and shapes of tags that are readily available from various commercial industries. The number of fisheries involved in the proposed program could potentially require tag manufacturers to develop new molds at substantial costs to fishery participants, which is particularly cost-prohibitive for those fisheries with relatively few participants. Plastic tags also create additional drag on buoys, and cause them to be more easily fouled by drifting kelp, increasing the potential for gear loss or tag detachment in fisheries that operate close to shore. As with line marking, time constraints required that the Department focus on a simpler approach.

(b) No Change Alternative:

Without the proposed regulations, the Department would not be able to meet its statutory duty under FGC Section 9005. Traps involved in an entanglement event are less likely to be identified. If the Department cannot identify the operator or originating fishery of the entangling gear, the Department cannot adopt appropriate measures and track fisheries contributing to entanglements.

## V. Mitigation Measures Required by Regulatory Action

The proposed regulatory action will have no 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. 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 business, the elimination of existing businesses or the expansion of businesses in California since the proposed regulation would only lead to a minor modification in 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.

## VII. Economic Impact Assessment

- (a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The proposed regulations are not anticipated to result in the creation or elimination of jobs within the state because the proposed action does not introduce significant new costs, changes in the demand for labor, nor changes to anticipated harvest quantities.

- (b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The proposed regulations are not anticipated to result in the creation of new businesses or the elimination of existing businesses within the state because the proposed action does not introduce significant new costs, changes in the demand for labor, nor changes to anticipated harvest quantities.

- (c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The proposed regulations are not anticipated to result in the expansion of businesses currently doing business within the state because the proposed action does not introduce significant new costs, changes in the demand for labor, nor changes to anticipated harvest quantities.

- (d) Benefits of the Regulation to the Health and Welfare of California Residents:

The proposed regulations are not anticipated to directly impact the health and welfare of California residents.

(e) Benefits of the Regulation to Worker Safety:

The proposed regulations are not anticipated to impact worker safety.

(f) Benefits of the Regulation to the State's Environment:

The proposed regulation is anticipated to benefit the State's environment by enabling managers to better identify the commercial trap fisheries involved in the event of a marine life entanglement, gather data, and develop mitigation strategies.

## 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 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.

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:

<b>Fishery &amp; Gear Type</b>	<b>Identification Number</b>	<b>Identification Letter</b>
Lobster Trap	operator's commercial fishing license identification number	P
Rock Crab Trap	operator's commercial fishing license identification number	X
Tanner Crab Trap	vessel's commercial 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.

## PROPOSED REGULATORY LANGUAGE

Section 122.1, Title 14, CCR, is amended to read:

### § 122.1. Lobster Buoys and Trap Tags

... [No changes to subsection (a)]

~~(b) Each buoy identifying a lobster trap shall display the commercial fishing license identification number of the lobster operator permit holder followed by the letter P. The commercial fishing license identification number and the letter P shall be in a color that contrasts with that of the buoy and shall be at least 1 inch in height and at least 1/8 inch in width. All lobster operator permit holders shall maintain lobster trap buoys in such a condition that buoy identifying numbers are clearly readable. Each buoy marking any lobster trap shall comply with marking requirements set forth in Section 180.5 of these regulations.~~

... [No changes to subsection (c)]

Note: Authority cited: Sections 7075 and 7078, and 9005, Fish and Game Code.

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

## PROPOSED REGULATORY LANGUAGE

Section 125, Title 14, CCR, is amended to read:

### § 125. Commercial Rock Crab Permits

... [No changes to subsections (a)-(b)(1)]

(b)(2) ~~Pursuant to Fish and Game Code Section 9005, every trap or string of traps deployed for purposes of commercially harvesting rock crab shall be marked with a buoy.~~ Each buoy marking any rock crab trap shall comply with marking requirements set forth in Section 180.5 of these regulations.

... [No changes to subsections (b)(3)-(j)]

Note: Authority cited: Sections 1050 ~~and~~, 8282, and 9005, 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.

## PROPOSED REGULATORY LANGUAGE

Section 126.1, Title 14, CCR, is amended to read:

### § 126.1. Commercial Take of Tanner Crab

... [No changes to subsections (a)(1)-(a)(4)(E)]

(F) ~~Vessel Buoy Marking Requirement. In addition to the trap and buoy marking requirements specified in Fish and Game Code section 9006 and 9007, every~~Each string of traps shall be marked with a buoy on each end of the string that is marked with the vessel's commercial boat registration number issued by the department pursuant to Fish and Game Code Section 7881. Each buoy marking any tanner crab trap shall comply with marking requirements set forth in Section 180.5 of these regulations. A vessel fishing under authority of a Tanner Crab Trap Vessel Permit may only take, possess aboard a vessel, transport, deliver, or land Tanner crab from traps marked with the vessel's own registration number. ~~The vessel's registration number on each buoy shall be preceded by the letters "TC." The numbers and letters shall be in a color which contrasts with the color of the buoy. A line thickness no less than 1/8 inch shall be used to create letters and numbers which shall be no less than two (2) inches in height and no less than one (1) inch in greatest width. The permit holder shall maintain the buoys so that the registration numbers and the letters "TC" are legible and easily determined.~~

... [No changes to subsections (a)(4)(G)-(f)]

Note: Authority cited: Sections 713, 1050, 5508, 7090, 7857, 8026 ~~and~~, 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.

## PROPOSED REGULATORY LANGUAGE

Section 180.1, Title 14, CCR, is amended to read:

### § 180.1. Spot Prawn (*Pandalus platyceros*) Fishing.

... [No changes to subsections (a)-(c)]

(d) ~~Each string of~~ Each buoy marking any spot prawn traps shall ~~be marked with a buoy bearing the commercial fishing license identification number issued to the owner or operator of the vessel.~~ comply with marking requirements set forth in Section 180.5 of these regulations.

Note: Authority cited: Sections 711 ~~and~~, 8591, and 9005, 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.

**PROPOSED REGULATORY LANGUAGE**

**Section 180.5, Title 14, CCR, is amended to read:**

**§ 180.5. Trap Buoy Identification**

(a) Pursuant to the provisions of Section 9005 of the Fish and Game Code, every trap or string of traps placed in waters of the state to take fin fish, mollusks or crustaceans for commercial purposes shall be marked with a buoy. ~~Buoys used to mark any trap or string of traps shall be clearly and distinctly marked with a buoy identification number as required by Section 9006 of the Fish and Game Code. The specified identification number shall be at least one and one-half inches in height and one-quarter inch in width. Each trap marker buoy shall bear the specified number in a color which contrasts with that of the buoy and the number shall be applied so that it is visible and legible.~~

(b) Notwithstanding requirements set forth in Fish and Game Code Section 9006, starting May 1, 2020:

(1) Every buoy marking a commercial trap used in a fishery described below shall be marked exclusively with the Identification Letter specific to that fishery.

(2) At least one buoy marking each trap, or each end of a string of traps, shall be marked with the Identification Number followed by an Identification Letter.

(3) Identification Numbers and Identification Letters shall be as follows:

<u>Fishery &amp; Gear Type</u>	<u>Identification Number</u>	<u>Identification Letter</u>
<u>Lobster Trap</u>	<u>operator's commercial fishing license identification number</u>	<u>P</u>
<u>Rock Crab Trap</u>	<u>operator's commercial fishing license identification number</u>	<u>X</u>
<u>Tanner Crab Trap</u>	<u>vessel's commercial boat registration number</u>	<u>I</u>
<u>Spot Prawn Trap</u>	<u>operator's commercial fishing license identification number</u>	<u>S</u>
<u>Coonstripe Shrimp Trap</u>	<u>operator's commercial fishing license identification number</u>	<u>C</u>
<u>Nearshore Finfish Trap</u>	<u>operator's commercial fishing license identification number</u>	<u>Z</u>

(c) All Identification Numbers shall be at least one and one-half (1.5) inches in height and drawn with a line no less than 1/4 (0.25) inch thick.

(d) Identification Letters shall be at least three (3) inches in height and drawn with a line no less than 1/4 (0.25) inch thick. Every buoy shall be marked as follows:

(1) Buoys that are four (4) inches in diameter or greater shall have Identification Letters marked on four opposing sides; and

(2) Buoys that are smaller than four (4) inches in diameter shall have Identification Letters marked on two opposing sides.

(e) All Identification Numbers and Identification Letters on a buoy shall be clearly and distinctly marked, and in a color that contrasts with the buoy; the numbers and letters shall be applied and maintained so that they are visible and legible.

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

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