

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

Amend Section 132.2;  
Add Section 132.7;  
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, 2019
- II. Date of Amended Initial Statement of Reasons: April 30, 2019
- III. Date of Supplemental Statement of Reasons: August 19, 2019
- IV. Date of Final Statement of Reasons: September 16, 2019
- V. Date and Location of Scheduled Hearings:

- Date: 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

- Date: 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

- VI. Update:

The public comment period for the initially proposed regulations, forms, and related documents began February 15, 2019. Following consideration of both written comments received during the public comment period and oral comments made at the public hearing on April 2, 2019, the Department proposed additional changes to the amendment of Section 132.2, changes to the added Section 132.7, and minor changes to forms DFW 1059 and DFW 1078. No changes were proposed to Section 705 or form DFW 1078a.

The Department considered these changes to be within the scope of the originally proposed action and to be sufficiently related to the original text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. However, to ensure adequate public notice, the full text of the resulting amendments, with the changes clearly indicated, amended forms, and Amended Initial Statement of Reasons were made available to the public for a second 45-day comment period.

The second 45-day comment period began May 10, 2019 and a second public hearing was held on June 25, 2019. After considering both written comments received during the second public comment period and oral comments made at the second public hearing, the Department adopted the originally noticed text of Section 705 and the originally noticed form DFW 1078a. The Department also adopted the amended text of Section 132.2 and Section 132.7, and the amended forms DFW 1059 and DFW 1078, as described in the second 45-day notice.

The Department then submitted the rulemaking file to the Office of Administrative Law (OAL) for review on July 15, 2019. Preliminary review by OAL indicated additional changes were necessary. On August 14, 2019, the Department withdrew the rulemaking file from OAL.

On August 19, 2019 the Department proposed additional changes to Section 132.7 and forms DFW 1059, DFW 1078, and DFW 1078a, as described in the Supplemental Statement of Reasons. The Department determined the changes to be sufficiently related to the modified text that the public was adequately placed on notice that the changes could result from the previously proposed regulatory action; therefore a 15-day continuation notice was published and mailed.

Shortly after mailing the notice, the Department became aware that the notice was not sent to all interested parties.

To correct this oversight, on August 30, 2019, the Department sent another 15-day continuation notice to *all* interested parties and extended the closing date of the continuation notice period to September 14, 2019.

Following the close of the extended 15-day continuation notice period, the Department adopted the amendments to Section 705, as described in the initial 45-day notice, and Section 132.2, as described in the second 45-day notice. The Department also adopted the addition of Section 132.7 and the proposed forms DFW 1059, DFW 1078, and DFW 1078a as described in the 15-day continuation notice. The forms have been incorporated by reference as it would be cumbersome, unduly expensive, and otherwise impractical to publish the documents in the California Code of Regulations.

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

All written comments received by the Department on the proposed regulatory changes during the initial 45-day public comment period and oral comments received during the initial public hearing are summarized and responded to in Tab A, Item 8. All written comments received by the Department on the proposed regulatory changes during the second 45-day public comment period and oral comments received during the second public hearing are summarized and responded to in Tab B, Item 7. The Department did not receive any comments on the additional changes, described in the Supplemental Statement of Reasons, during the 15-day continuation notice period as extended.

VIII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Department of Fish and Wildlife  
20 Lower Ragsdale Drive, Suite 100  
Monterey, California 93940

Department of Fish and Wildlife  
1416 Ninth Street, Room 1342A  
Sacramento, California 95814

IX. 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.

X. 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 Retrieval Permits and Amendments; enforce the program in the field; and reimburse Retrieval Permittees for non-payment by a Responsible Vessel Permitholder and assess trap fees against the non-paying Responsible Vessel Permitholder. 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.