

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
FINAL 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 of Final Statement of Reasons: October 16, 2019
- III. Dates and Location of Scheduled Hearings:

Date: Tuesday, 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. to 12 p.m.

Date: Monday, October 7, 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. to 12 p.m.

IV. Update:

The California Department of Fish and Wildlife (Department) proposed amendments to Sections 122.1, 125, 126.1, 180.1, & 180.5, Title 14, California Code of Regulations (CCR). The proposal (California Regulatory Notice Register No. Z2019-0611-06), establishes the Standardized Commercial Trap Marking Program (Marking Program), which places new buoy marking requirements for six commercial trap fisheries deployed off the coast of California. The proposed Marking Program (“Original Proposed Package”) was noticed for a 45-day public comment period starting June 21, 2019, ending August 6, 2019.

The Department held a public hearing on Tuesday, August 6, 2019 from 10:00 a.m. to 12:00 p.m. at the Department’s Monterey Office Conference Room. The minutes from this public hearing are provided in **Appendix A**.

On August 20, 2019, the Department posted notice of a 45-day continuation comment period for the proposed Marking Program, ending on October 4,

2019. This 45-day comment period extension served to correct an oversight for certain interested parties who did not receive electronic or hard copy notice of availability of the Original Proposed Package during the June 2019 mailing, consistent with Government Code subsection 11346.4(a) and Section 86, Title 1, CCR. In the interest of transparency, the Department notified the full list of interested parties (consisting of primarily commercial fishermen of the affected trap fisheries – lobster, rock crab, tanner crab, spot prawn, coonstripe shrimp and nearshore finfish), including those who received the notice of the Original Proposed Package in June 2019. There were **no proposed changes to the Original Proposed Package** with this 45-day comment period continuation.

A second public hearing was held on October 7, 2019 from 10:00 a.m. to 12:00 p.m. at the Department's Monterey Office Conference Room. No interested parties or affected members of the public attended this hearing. Department staff were present at the Monterey Office for the two hours of the meeting. No comments were received, and at 12:00 p.m., the hearing was adjourned.

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action. The Department adopted the regulations on October 16, 2019.

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

No written comments were received by the Department during the first 45-day comment period. The only comments received during the 45-day comment period were stated orally during the first public hearing held on August 6, 2019 (**Appendix A**).

Three written comment letters were received during the 45-day continuation period and are provided with **Appendix B**. There were no comments at the second public hearing held on October 7, 2019.

All comments received during both the first 45-day day comment period and the 45-day continuation comment period on the proposed regulatory action are summarized and responded to in attached **Appendix B**.

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Department of Fish and Wildlife
1933 Cliff Drive Suite 9
Santa Barbara, CA, 93109

and

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

VII. 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.

(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.

VIII. 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.

Updated 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:

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 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.

UPDATE

There have been no changes in applicable laws, or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action. The Department adopted the regulations on October 16, 2019.