

**APPENDIX A**

**STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND WILDLIFE  
MINUTES OF THE PUBLIC HEARING**

**Date:** August 6, 2019

**Location:** California Dept. of Fish and Wildlife (CDFW)  
Monterey Office, Large Conference Room  
20 Lower Ragsdale Drive, Suite 100  
Monterey, CA 93940

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

The minutes include a full record of the hearing, including detailed (but non-verbatim) back-and-forth discussions that may go beyond provision of a comment on the proposed regulations.

**CDFW staff attending:** Anthony Shiao (Marine Region), Joanna Grebel (Marine Region), Morgan Ivans-Duran (Marine Region), Erin Boydston (Marine Region), Ona Alminas (Regulations Unit)

**Members of the public attending:** Tom Faulk (Fishing Vessel Aqua Leo), Skylar Campbell (Commercial Fisherman, Fishing Vessel Sable), Giovanni Nevoloso (Fisherman), Latisha Marshall (Santa Cruz Harbor), Blake Anderson (Santa Cruz Harbor)

**10 A.M. Hearing Opening by Ona Alminas**

Ona Alminas, Senior Environmental Scientist for CDFW welcomed everyone to the hearing for the Standardized Commercial Trap Marking Program. After introducing herself, she introduced CDFW staff present in the room (Joanna Grebel, Morgan Ivans-Duran, Erin Boydston, and Tony Shiao). Ms. Alminas described the purpose of the hearing is to receive public comment on the proposed draft regulations under the Administrative Procedure Act (APA). Ms. Alminas also reminded the audience that the hearings' proceedings were being recorded to ensure accurate characterization of comments received for CDFW response, and minutes were being recorded and will also made part of the record. She stated that written and oral comments can be received at the hearing, and reminded attendees that CDFW is not obligated to respond to comments during the hearing, but that staff are obligated to respond to comments in a written format as part of the Final Statement of Reasons, which is a document that CDFW prepares that is a "final wrap-up" of the proposal, and will have the final regulatory text in it, as well as the responses to comments. Ms. Alminas made clear that Marine Region staff present may wish to engage in a discussion with a commenter as a response to what a commenter is saying, with the understanding that what everyone

says goes on record. Ms. Alminas also indicated that written comments could be submitted at the hearing, and up until 5:00 P.M. this afternoon, which marks the end of the 45- day public comment period.

Ms. Alminas reminded attendees to sign in at the room entrance, if they haven't already, and if they were planning to speak, to fill out a speaker card; given the number of attendees present, she emphasized that the group may speak in a less formal manner in more of a discussion-type format. She emphasized that a speaker should state their name for the record. She reminded attendees of cellular phone etiquette, and the location of the restrooms.

### **10:05 A.M. Brief presentation on the proposed regulations**

Anthony Shiao presented a couple of PowerPoint slides as an overview of the proposed regulations. Mr. Shiao provided background on the 2018 Senate Bill (SB) 1309, which was Legislature's request for CDFW to implement a standardized gear marking program in response to increased whale entanglement reports. Oftentimes, the gear is not identifiable by the National Marine Fisheries Service (NMFS) and CDFW. Starting in April, CDFW reached out to the commercial trap fishing stakeholder group, and subsequently formalized a proposal which was then submitted for notice on June 21, 2019, which began the 45-day comment period that ends today (August 6, 2019).

Mr. Shiao went over the marking proposal, for commercial trap fishing gear. Under the proposal, buoys must be marked based on buoy size. For buoys equal to, or greater than four inches in diameter, the buoy must be marked on four opposing sides with the prescribed numbering and lettering. For buoys less than four inches in diameter, the lettering must be marked on two opposing sides. Letters are proposed to be three inches tall, and numbers must be 1.5 inches tall, depending on the fishery. Line width for numbering or lettering is proposed to be a quarter inch thick. Six fisheries are affected by the proposed regulations: lobster, rock crab, tanner crab, spot prawn, Coonstripe shrimp, and nearshore livefish. Three other fisheries are not proposed for the marking pursuant to the rulemaking are Dungeness crab, hagfish, and sablefish.

Current marking requirements are either stated in Fish and Game Code, and/or the affected Title 14 regulations, where some fisheries do not have an identification number or letter requirement, and some do. The proposed regulations essentially "fill in the blanks" in providing a number or letter requirement that is standardized across the six fisheries, the number would be the commercial fishing license number ("L number"), except for Tanner crab, which has already been required by existing Title 14 regulations. The proposed letter requirement is a single letter standardized across the fisheries that would allow for tracking the fishery to which a set of gear belongs to, in the event of a marine life entanglement. Mr. Shiao stated that fishermen don't need to change their gear overnight – everyone would have the chance to change their marking by May 1, 2020 to whatever is necessary to bring their gear into compliance.

Mr. Shiao then went over the timeline for the regulation implementation – August 6 is the close of the comment period, then in September the regulations would be finalized

and submitted for approval in September. The regulation is anticipated to be chaptered and published by November 15, 2019, and then compliance with the marking would not need to happen until May 1, 2020. This compliance date was proposed in order to time the marking in between as many of the fishing season as possible. Only the spot prawn fishery north of Point Conception will be impacted mid-season.

**10:12 A.M. Public Comments.** Ms. Alminas reminded hearing attendees that the comment period closes today (August 6), and that all comments must be received by 5 p.m. today to the email address [Regulations@wildlife.ca.gov](mailto:Regulations@wildlife.ca.gov). She mentioned that hearing attendees may pass any written comments to CDFW staff, or state verbal comments for the record.

The following is a full record of, including detailed (but non-verbatim) back-and-forth discussions that may go beyond provision of a comment on the proposed regulations. The first speaker on a particular topic is bulleted below.

**1. 10:13 A.M. Giovanni Nevoloso** (Nearshore and Rock Crab Commercial Fisherman, Monterey)

**Comment 1-a.** Mr. Nevoloso stated that the new marking regulations are excessive for near shore finfish traps. Nearshore fishermen fish in shallow water (as shallow as five feet), and deeper (forty feet). He doesn't think whales could end up in water that shallow. Mr. Nevoloso is opposed to this part of the proposed regulations because they go too far for nearshore traps, and a mark shouldn't be needed. For deeper nearshore, it seems that you need something to mark the traps.

- Ms. Grebel clarified that there are two separate permits for the commercial nearshore fishery, shallow & deeper, and that indeed, the proposed regulation and gear marking would apply to both.
- Mr. Nevoloso reiterated that he does not agree to nearshore marking.
- Mr. Shiao stated that we do want the proposed regulations to apply to all traps of the subject fisheries, because of the potential of gear loss. If the gear can be lost, there's a possibility that the worst can happen (i.e., potential marine life entanglement).
- **Comment 1-b.** Mr. Nevoloso stated that a trap has a potential to be lost at some point. However, for nearshore, trap loss doesn't happen, because fishermen fish that day, and at the end of the day, the gear is retrieved and taken home. It seems that CDFW staff don't understand specific fishermen experience or situations.

**2. 10:15 A.M. Skylar Campbell** (Rock Crab, Hagfish and Sable fish Commercial Fisherman, Monterey)

Mr. Campbell initiated more a of a discussion that lasted for approximately 16 minutes.

**Comment 2-a.** He was curious to understand how marking a buoy correlates to whale entanglement. If a buoy is marked more times on it with a letter that signifies a certain

fishery, how does that solve a problem, as CDFW staff are concerned about unidentified traps.

**Comment 2-b.** The second question, what does CDFW do with that information, e.g., how many entanglements by fishery, would it be for enforcement, such as pinpointing the fishermen whose buoy was entangled with a whale, such that CDFW would suspend that fishermen's permit, or penalize the fisherman?

- Ms. Grebel clarified that the federal government, NMFS has a group that deals specifically with whale entanglement, and are the point agency that track whale entanglement, and are the keeper of the data on the west coast. Often, NMFS will receive a report of a whale with gear wrapped around it, and sometimes they can't even tell what state the gear has come from, as whales can drag traps a very long distance. An entanglement that was observed just a week prior involved gear that was very difficult to identify. . The point of the marking is to mark gears a certain way to help pinpoint its origin, NOT for punitive purposes (to be very clear – it is not the goal of marking programs to get a fisherman in trouble), but if agencies can figure out what fishery the gear came from, it would help contribute to the understanding. Agencies still seek means to understand where a fisherman was fishing, how the entanglement occurred, and overall how to prevent entanglements from happening in the future. For those fisheries not included in the proposed rulemaking – Dungeness crab has its own trap tag, sable fish has an existing buoy marking, both allowing for identification. Often, NMFS tracks entanglements where the gear is unidentified, and it turns into a lot of finger pointing between various potential responsible parties. But inclusion of a marking would help agencies understand where encounters are occurring. For example, if all entanglement turns out to be originating from traps deployed in deep water, the state can better focus resources on developing mitigation measures for those deep-water fisheries. It is NOT for punitive purposes. We have the settlement agreement for the Dungeness crab fishery, which included options to possibly hold that fishery accountable when trap owners/ operators cannot be identified.
- **Comment 2-c.** Mr. Campbell stated he wished the agencies or working groups had consulted fishermen for their expertise, as he stated he can look at a buoy and know exactly the type of fishery being operated. He understands there has been a court case, a settlement, and that it's all said and done, but advised that it would be wise to incorporate stakeholders and people like Mr. Nevoloso who have been fishing since the beginning of time, as they hold a wealth of knowledge that could be tapped into, and fishermen would like to help. He realizes there are task forces or groups of people in rooms with buoys trying to figure out how to make things work.
- Ms. Grebel responded that such task forces and working groups exist, and having more tools and resources are needed in those instances when a whale is entangled. When photographed moving in a pod, often a blurry photo results, so markings are a tool to help identify and understand what is going on (and provide a better chance for identification even if the photo is blurry). Fishermen expertise is definitely tapped into, such as with the Whale Working Group, comprised of some members of the Dungeness crab fishery, but also other fishermen,

scientists, representatives from the sport sector, and others who work on the gear issue. Fishermen are crucial, and are consulted through a process like this, as fishermen have the on-the-water knowledge that others don't have.

- **Comment 2-d.** Mr. Campbell stated that this past year, he worked with a Monterey organization with the recovery of lost fishing gear. Between spotting, and hauling, or catching on his salmon gear, he recovered about 20 sets of derelict/ lost gear or crab pots. Mr. Campbell also wishes to know what is being done for recreational Dungeness crab fishery. According to Mr. Campbell, many commercial traps are abandoned and/or poorly marked.
- Ms. Grebel sought to clarify Mr. Campbell's point – whether his question is about implementing a derelict gear recovery program for the recreational fishery, or whether he is speaking about implementing different regulations/ holding the sport fishery accountable (i.e., towards trap limits, or requiring marking their traps).
- **Comment 2-d.** Mr. Campbell understands the regulatory authority is different between commercial and recreational, but wants to know what can be done for regulating the recreational fishery, as he sees them as consumptive, but they don't see the kind of regulations come down as for commercial.
- Ms. Grebel noted that the proposed marking program was a mandate of the Legislature, which as Mr. Campbell noted, is the body that generally manages commercial fisheries through bills and authorizing code changes. The Fish and Game Commission, on the other hand, is the body that manages the recreational sector. Ms. Grebel referred to Mr. Shiao regarding if anything is in the works with regards to recreational changes for marking, or otherwise.
- Mr. Shiao stated that there are serious conversations underway amongst the CDFW marine invertebrate team with regards to potentially regulating the recreational sector. The Commission public input process is rather complicated, and is executed over a series of meetings that often takes longer, with often two to three meetings where the public can provide comment. The meetings are located across the state, so that would require travel, and that process for rulemaking tends to be longer.
- **Comment 2-e.** Mr. Campbell didn't intend to bring this up in the manner that recreational should be regulated like commercial, but rather express his concern as a fishermen who sees what is going on, on a daily basis, that there are a lot of potential whale hazards that get left behind. Unless an emergency happens, commercial Dungeness crab fishermen tend to be good stewards who clean up after themselves, and retrieve every one of their pots. The recreational sector, from what he's seen, are not as good of stewards as commercial fishermen.
- Ms. Alminas included the clarifier that the proposed trap marking regulations for the six affected fisheries of the commercial sector is under CDFW rulemaking authority, not Commission authority, so it doesn't need to go through the two to three meeting process, with the full Commission in front of us.
- Mr. Shiao responded to Mr. Campbell's question of why marking buoys is the potential solution. He pulled up a slide from Appendix M of the 2018 Whale

Entanglement Forensic Review Workshop Summary Report (Pacific States Marine Fisheries Commission and National Oceanic and Atmospheric Administration, which was a document relied upon for the rulemaking), which showed the pie chart of presence of buoys reported/ observed in entanglement cases. The pie chart depicts that most of the time (69%) buoy(s) could be observed as part of an entangling gear, and there is no buoy presence for about a third of the time (28%). This is what the NMFS folks are considering. During the pre-notice outreach webinar that CDFW held on May 6, 2019 (see page 11 of the Initial Statement of Reasons – ISOR), CDFW staff had discussed other options that NMFS had been evaluating in terms of the data they've collected. There were discussions on potentially marking the gear lines. But such a solution has pros and cons, as tested on the east coast. Because of the uncertainty of line marking, CDFW, in consultation with fishermen during pre-notice outreach, identified the buoy marking as the preferred alternative.

**3. 10:31 A.M. Tom Faulk** (Dungeness Crab, Sablefish Fisherman, Fishing Vessel Aqua Leo)

**Comment 3-a.** Mr. Faulk asked to clarify that none of the proposed marking is for Dungeness crab buoys. Currently, Dungeness crab only have a single marking, paired with the trap tags. Therefore, to confirm, crab fishermen won't be required to mark on four sides, or worry about the proposal by November 15.

- Mr. Shiao confirmed that is correct, the proposed marking does not affect Dungeness crab.
- **Comment 3-b.** Mr. Faulk currently has a two-inch brand on his buoys, but his main concern is if he had to add three to four inch size markings on all four sides, it could degrade the buoy, and when the buoy sinks down or gets pulled under, it would shrink up and not expand again to normal size. It would be quite expensive to change brands and numbers, and if he had to add more brands or numbers, that would make the buoys look shabby. He does fish sablefish, so those markings are four or five inch, on 28-inch polyform buoys, not on all four sides, but to comply with NMFS number and letter marking requirements, those numbers and letters already encircle the buoy, therefore it would make marking on all four sides a challenge. Mr. Faulk does understand the proposed rulemaking does not apply to sablefish or long line gear; therefore, he's less concerned with that.
- **Comment 3-c.** His main concerns were the markings on all four sides of his 400 Dungeness crab buoys, if he were to have to do it – it would be a financial hardship, having to start all over, and purchase all new buoys.
- Mr. Shiao held up as an example a small five-inch float, on which he inscribed numbers, which meet the new proposed requirements. He stated that he is pretty sure that the even fishermen in the south that are fishing very close to shore are using buoys larger than the one shown; therefore, they shouldn't have a problem with meeting the marking requirement.

- Mr. Faulk noted that previous regulations seemed to have constraints for trailer length, but that isn't a requirement for sablefish, though he's unsure of the trailer length requirements for other fisheries.
- Mr. Nevoloso mentioned that a trailer is not needed for nearshore, since it is a shallow fishery (five to 40 feet generally).
- **Comment 3-d.** Mr. Faulk also voiced that most fishermen are on top of their markings, but he also had the same thought as Mr. Campbell, in that he doesn't see how a buoy marking will prevent a whale from getting entangled.
- Mr. Shiao agreed, that marking in and of itself would not prevent a whale entanglement, but it does help managers figure out what is going on.
- Mr. Faulk stated that most whale entanglements involve crab gear, he hasn't seen whale entanglements from the big polyform buoys trailing behind it. Usually when trap fishing or sablefish fishing, the gear is pulled up the same day after fishing. As he is a long liner, his gear goes home with him when he is done fishing.
- Ms. Grebel mentioned that a handful of years ago, a whale of some sort got entangled in a sablefish trap, but it is not common.
- Mr. Nevoloso mentioned an incident over 20 years ago when he had set out two sets of pots offshore from Carmel (two sets of seven pots with double buoy), and when he came back the next morning, he found that the pots were not there, and that someone must have cut the buoy, which was a common occurrence back in the day. He was wondering how something could have dragged the pots. He received a phone call, asking if he had seen the front page of the newspaper – his buoy was found entangled with a whale. The whale had moved 14 pots out near Point Lobos. Fish and Game identified his number, but they didn't try to contact him. Fish and Game tried to use a winch to pull up his pots, but due to the line weight (6,000-pound limit), they were unable to pull them up, so they cut the line, and left 14 pots at the bottom. Mr. Nevoloso had asked why he wasn't contacted, since that's a considerable financial loss. Another instance appeared to be with his crab pots, of line cutting presumably by people, who he said are his main problem in Monterey Bay.

**Response:**

*CDFW's formal responses to these comments are reflected in the Final Statement of Reasons (FSOR) package **Appendix B** (Responses to comments)*

**10:41 A.M. Hearing Wrap-Up**

Ms. Grebel asked if there were any more comments on the proposed regulations or wished to speak. Hearing no additional requests, Ms. Grebel thanked everyone for their comments, and reminded everyone that written responses will be provided with the FSOR.

Ms. Alminas mentioned she was available should any other attendees have anything else to mention for the record until 12 p.m., when the hearing would close. She reminded attendees that they could submit any written comments at the door or by email to [Regulations@wildlife.ca.gov](mailto:Regulations@wildlife.ca.gov) before 5:00 P.M.

Two meeting attendees, Mr. Campbell and Mr. Nevoloso, stayed to ask questions of CDFW staff regarding the regulatory process for commercial versus recreational fisheries, and the Legislature's role versus the Fish and Game Commission. No other comments on the proposed regulations were received.

### **12:00 P.M. Hearing Adjourned**

No new attendees came and signed in after 10:41 A.M., therefore there were no further comments on the proposed regulations. At noon, the hearing was adjourned.