

APPENDIX B

122.1, 125, 126.1, 180.1, & 180.5 Responses to Public Comment on Standardized Commercial Trap Marking Program

Commenter Number, Name, Date	Comment	Department Response
<p>Responses to Comments received during the Initial Public Notice period June 21 to August 6, 2019.</p>		
<p><i>Comments may be paraphrased from the commenters for succinctness</i></p>		
<p>No written comments were received during the initial 45-day comment period.</p>		
<p>Responses to Comments received during the Public Hearing on August 6, 2019, Monterey, California.</p>		
<p><i>Comments identified in Appendix A (Public Hearing Minutes) may be paraphrased from the commenters for succinctness</i></p>		
<p>1 Giovanni Nevoloso Nearshore and Rock Crab Commercial Fisherman, Monterey Verbal statement dated 8/6/2019</p>	<p>1-a. Nearshore fishermen fish in shallow water (as shallow as five feet), and in deeper water (e.g., forty feet). Requiring marking for shallow nearshore traps is unnecessary, since whales do not swim that close to shore. 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.</p>	<p>1-a. The California Department of Fish and Wildlife (Department) issues both nearshore (Sections 150 and 150.01, Title 14, California Code of Regulations (CCR)), and deeper nearshore commercial fishery permits (Section 150.02, Title 14, CCR). The proposed marking program applies to traps for both nearshore and deeper nearshore finfish, consistent with subdivision (c) of Fish and Game Code Section 9006 (“...trap used to take finfish other than sablefish or hagfish...”).</p> <p>Any trap gear deployed in the ocean can potentially be lost and drift into deeper water. As such, the Department is requiring that commercial trap gear for the nearshore fisheries to be marked.</p>
	<p>1-b. Mr. Nevoloso stated that a nearshore 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 Department staff don't understand specific fishermen experience or situations.</p>	<p>1-b. Subdivision (d) of Section 9001.7 of Fish and Game Code (FGC) explicitly allows finfish traps to be left in the water overnight, provided that they are wired open and left unbaited, and fishermen may opt to leave gear in the water as opposed to retrieving them at the end of every day. Furthermore, not leaving gear out in the water overnight might reduce the rate of gear loss, but not eliminate it. Even if every fisherman chooses to retrieve gear at the end of each fishing day, there is still a potential for gear to be lost during day light hours due to weather, operation error, or other factors.</p>

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<p>2 Skylar Campbell</p> <p>Rock Crab, Hagfish, and Sablefish Commercial Fisherman, Monterey</p> <p>Verbal statement dated 8/6/2019</p>	<p>2-a. Mr. Campbell was curious to understand how marking a buoy would reduce 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 Department staff are concerned about unidentified traps.</p>	<p>2-a. National Marine Fisheries Service (NMFS) has a group that deals specifically with whale entanglement, and are the point agency that track data on whale entanglement 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. While gear marking of a buoy or gear itself does not affect the rate of entanglement, it would allow fishery managers to identify the responsible fishery during an entanglement. 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%).</p> <p>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. Based on statistics alone, presence of a buoy, and having a marking on it, would provide a better chance of identifying the responsible fishery. Managers can then contemplate and implement more targeted and effective mitigation measures for the identified fisheries to reduce entanglement risk. For example, if all entanglement turns out to be originating from traps deployed in deep water, the state can better focus its resource on developing mitigation measures for those fisheries.</p>
	<p>2-b. Mr. Campbell wishes to see more clarification on how the identified fishery, and identification of the trap in an entanglement is used. For instance, would the data be for Department staff to track how many entanglements by fishery, or for enforcement, such as pinpointing the fishermen whose buoy was entangled with a whale (such that the Department would suspend that fishermen's permit, or penalize the fisherman)?</p>	<p>2-b. While this comment is outside the scope of the rulemaking, the point of the proposed marking is to mark gears a certain way to help pinpoint its origin, and not for punitive purposes. If agencies can figure out what fishery the gear came from, it would help contribute to the understanding. The proposed regulation is not focused on the effect entanglement events may have on fisheries, or how mitigation measures would ensue.</p>

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	<p>2-c. Mr. Campbell wishes to have seen more in-depth consultation during this rulemaking process between the state and commercial fishermen, some of whom have been fishing for a very long time, and who can look at a buoy in the water and know which fishery it belongs to. Mr. Campbell realizes there are task forces or groups of people trying to figure out how to make things work.</p>	<p>2-c. The Department frequently engages fishermen expertise, such as with the Whale Working Group (a joint effort with National Oceanic Atmospheric Administration, Ocean Protection Council, and the Department), as well as the California Dungeness Crab Fishing Gear Working Group, which is established in Fish and Game Code (Section 8276.1). Such groups are 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 were invited to participate in the pre-notice outreach effort for this rulemaking from April and May 2019 (webinar), and the Department considered input received into the proposed marking program.</p>
	<p>2-d. In working with a Monterey organization on the recovery of lost fishing gear this past year, he helped with the recovery of about 20 derelict or lost crab pots. Along these lines, Mr. Campbell wishes to know what is being done with the recreational Dungeness crab fishery? Recreational crab traps should also be subject to marking requirements, considering recreational fishermen are also consuming the resource.</p>	<p>2-d. This comment is outside the scope of this rulemaking. FGC Section 9005 does not grant the Department the authority to regulate recreational fishing gear. The proposed marking program is a mandate of the Legislature, which is the body that generally manages commercial fisheries through bills and authorizing code changes, implemented through a CDFW rulemaking. The Fish and Game Commission is the body that manages the recreational sector. There are discussions underway regarding how gear is treated in the recreational sector, which would go through the Fish and Game Commission rulemaking process.</p>
	<p>2-e. Mr. Campbell brings up this point from a concern of equity to the resource: commercial fishermen tend to be good steward of natural resources, and from what he's seen, the recreational sector can use some work.</p>	<p>2-e. The commenter's sentiment is noted, and the proposed regulation is in no way an admonishment towards the commercial fishing community. See response 2-d above regarding the recreational sector.</p>
<p>3 Tom Faulk Dungeness Crab and Sablefish Commercial Fisherman, Monterey Verbal statement dated 8/6/2019</p>	<p>3-a. Mr. Faulk wishes to confirm that proposed regulation would not affect Dungeness Crab gear.</p>	<p>3-a. Commenter is correct that the proposed regulation would not affect Dungeness Crab gear.</p>
	<p>3-b. 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.</p>	<p>3-b. See response 3-a above.</p>
	<p>3-c. Mr. Faulk stated he would be concerned if the markings would be required on four sides, as that would</p>	<p>3-c. While this comment is outside the scope of this rulemaking, the Spiny Lobster and Dungeness Crab commercial fisheries are the only</p>

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	require him to replace 400 buoys, constituting a financial hardship.	fisheries in which most, if not all, participants are known to deploy hundreds of traps. At the same time, the high value of these fisheries makes offsetting buoy cost less prohibitive, considering buoys have limited service life and must be replaced after a set time.
	3-d. Mr. Faulk echoed Mr. Campbell’s previous question of how see how a buoy marking will prevent a whale from getting entangled.	3-d. See response to 2-a above.
Responses to Comments received during the 45-day Continuation Notice period August 20 to October 4, 2019.		
<i>Comments may be paraphrased from the commenters for succinctness</i>		
<p>4</p> <p>Nick Krieger</p> <p>Dungeness Crab Commercial Fisherman, Bolinas</p> <p>Written comment dated 8/21/19</p>	<p>4-a. Querying whether additional markings are required for the commercial Dungeness Crab fishery</p>	<p>4-a. There will not be new marking requirements for the commercial Dungeness Crab fishery under current proposal.</p>
<p>5</p> <p>Kim Selkoe</p> <p>Executive Director of the Commercial Fishermen of Santa Barbara</p> <p>Written comment dated 9/26/19</p>	<p>5-a. Lobster and crab buoys are five to seven inches in diameter, and typically are branded instead of painted. The new marking requirement would make the branding on existing buoys impossible due to spacing issues.</p>	<p>5-a. The proposed rule does not prohibit branding of buoys, provided that the resulting colors are contrasting. It is the Department’s understanding that branding often results in coloring that contrasts with the surface of a buoy. Branding, or a combination of branding and painting is acceptable, as long as resulting colors are contrasting.</p> <p>The Department understands that the new marking requirements would render many of the current buoy marking obsolete. However, rebranding and repainting should be possible with the proposed letter and number sizes. The proposed rule does not require identification numbers to be marked in specific orientations, and there should be enough flexibility for fishermen to mark a buoy according to the new standard. Also see response to 3-c above.</p>
	<p>5-b. Proposes that two or more buoys connected together should be considered a single buoy.</p>	<p>5-b. The proposed regulation does not strictly define buoy. A floatation device is considered a single buoy whether it is consisted of one part, or two or more parts fused together.</p>

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	<p>5-c. An Identification Number should not have to precede an Identification Letter, and instead the regulation should just mention that both are included on the buoy.</p>	<p>5-c. FGC Section 9006 specifically requires Identification Numbers to precede Identification Letters, and Department staff do not believe that the authority given under FGC § 9005 for promulgation of regulations for standardized markings provides authority to override FGC § 9006.</p>
	<p>5-d. The size of Identification Numbers should be the same as current requirement of Commercial Spiny Lobster fishery (1 inch in height with a line thickness of no less than 0.125 inches), instead of the proposed 1.5 inches in height with a line thickness of no less than 0.25 inches.</p>	<p>5-d. The size of 1.5 inches height and 0.25 inch thickness is an existing standard for half of the affected fisheries that currently carry an Identification Number requirement (refer to Table 1 of the Initial Statement of Reasons; ISOR). This larger size is more visible than those required of Spiny Lobster traps, facilitating a greater chance of identification from law enforcement, Department, or NMFS staff during an entanglement.</p>
	<p>5-e. The minimum diameter of buoys that must be marked with Identification Letters on all four opposing locations (instead of opposing sides) should be 7 inches, instead of the proposed four inches.</p> <p>Buoys smaller than 7 inches should be marked in two opposing locations (instead of opposing sides).</p>	<p>5-e. Department staff tested buoys that are 5 to 6 inches in diameter, and found that marking on only two opposing sides leaves the Identifications Letters not visible half the time. As described on pages 8 and 9 of the ISOR, the requirement for marking on four opposing sides is critical because marking on just two sides of such float prevents reliable reading of the Identification Letter, depending on the float's orientation when bobbing in the water, or if trailed during an entanglement event.</p>
	<p>5-f. There should be an option for branding of the Identification Numbers and Letters, rather than marking that is independent of the color.</p>	<p>5-f. Refer to Response 5-a above. The proposed rule does not prohibit branding of buoys, provided that the resulting colors are contrasting.</p>
<p>6</p> <p>Catherine Kilduff, Senior Attorney</p> <p>Center for Biological Diversity</p> <p>Written comment dated 8/21/19</p>	<p>6-a. The commenter urges the Department to shift towards alternative fishing gears to reduce entanglement (e.g., ropeless fishing gear).</p>	<p>6-a. The Department supports the commenter's desire for innovation, and Department staff is in the process of developing an Experimental Fishing Permit program in collaboration with staff from the Fish and Game Commission and various stakeholders, but the comment is outside the scope of this rulemaking.</p>
	<p>6-b. The Department must take action to prevent entanglements, as noted by the numbers for Pacific Leatherback Sea Turtles, listed Humpback Whale Distinct Population Segments, and Blue Whales.</p>	<p>6-b. Recent Department rulemaking effort has been implementing legislation (Senate Bill 1309; Fisheries Omnibus Bill of 2018, McGuire, and Senate Bill 1017, Allen) to aid in reducing marine life entanglements, and facilitate tracking of those commercial fisheries associated with entanglements. These include (among others):</p> <ul style="list-style-type: none"> • SB 1017 – Drift Gill Net Transition Program (completed, effective September 15, 2019). • SB 1309 – this rulemaking (in process), and

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		<ul style="list-style-type: none"> SB 1309 – Risk Assessment Mitigation Program, anticipated notice winter 2020. <p>The Department continues to work with its partners and collaborators to reduce marine life entanglements from commercial fisheries.</p>
	<p>6-c. The Department should consider how the proposed standardized marking could apply to the ropeless gear system. Unique marking for line, trap, or buoy in the ropeless system is essential for wildlife safety. The Department should direct funding to test gear systems that eliminate entanglements. Given east and west coast entanglement issues, the Department should ensure the proposed regulations could be applied to future widespread use of ropeless systems.</p>	<p>6-c. See response to comment 6-a.</p>
	<p>6-d. The proposed regulation is a step in the right direction, and the Department should support development of ropeless gear systems for these fisheries.</p>	<p>6-d. The Department appreciates the support of Center for Biological Diversity on the proposed regulations, and will continue working with partners and collaborators on alternate gear systems.</p>
<p>Responses to Comments received during the 2nd Public Hearing on October 7, 2019, Monterey, California. <i>Comments may be paraphrased from the commenters for succinctness</i></p>		
<p>No interested parties or members of the public attended the public hearing, therefore there were no comments to respond to.</p>		