

State of California
Fish and Game Commission
Initial Statement of Reasons for Regulatory Action

Amend Sections 29.80, 29.85, and 701
Title 14, California Code of Regulations
Re: Recreational Crab Trap Fishery Marine Life Protection Measures

I. Date of Initial Statement of Reasons: September 10, 2020

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: August 19, 2020

Location: Webinar/Teleconference

(b) Discussion Hearing

Date: October 14, 2020

Location: Webinar/Teleconference

(c) Adoption Hearing

Date: December 9, 2020

Location: Webinar/Teleconference

III. Description of Regulatory Action

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

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR).

In the last several years, there has been an increase in the number of reported entanglements of marine life with fishing gear on portions of the Pacific coast. Between 2014 and 2019, three Humpback whale entanglements were attributed to the recreational crab fishery in California. (Saez et al. 2020; National Oceanic Atmospheric Administration [NOAA] Fisheries, 2020). The California Fish and Game Commission (Commission) has worked with the California Department of Fish and Wildlife (Department; CDFW) and with numerous stakeholders to identify the underlying issues and proposed solutions for minimizing risk of entanglement of marine life with fishing gear. This regulatory proposal is part of the state's ongoing efforts to reduce marine life entanglements, particularly entanglements of whales and sea turtles protected and/or listed under the federal Endangered Species Act (ESA). These proposed regulations would help minimize risk of entanglement through a management response and also help collect essential baseline information for future response to entanglement risk for the recreational crab sector. The proposed regulations include five elements: enhanced gear marking, trap servicing interval, traps limits, delegated management authority, and a validation program.

There are similarities between the California recreational (sport) fishery and the commercial fishery for Dungeness and other crabs. The California recreational crab fishery uses traps to

target primarily Dungeness crab, with rock crabs being targeted in some areas and taken incidentally in others. The recreational crab fishery uses similar gear as the commercial Dungeness crab fishery and overlaps with both the commercial fishing areas and the commercial fishing season (CDFW, 2019). The California commercial Dungeness crab fishery has specific licensing and reporting requirements, providing data on fishing location and landings, and commercial operators abide by a specified service interval when traps must be raised, cleaned and emptied. Unlike it does for the commercial Dungeness crab fishery, the Department has very little information on the recreational crab fishery, including information on the levels of take or effort.

Identifying the fishery responsible for an entanglement is essential to reducing future incidences. The current marking requirements for the recreational crab fishery are less stringent than those for the commercial crab fisheries. Buoy(s) attached to a recreational crab trap must be marked with the operator's GO ID (i.e., the "Get Outdoors Identification number", a unique number issued by the Automatic License Data System (ALDS) that is permanently tied to an individual), or, when deployed from a Commercial Passenger Fishing Vessel (CPFV), the CPFV's commercial boat registration number. However, the GO ID and CPFV numbering does not have a specific number size requirement, making the numbers difficult or impossible to read from a distance. As such, the ability to distinguish recreational crab trap gear from other fishing gear during a marine life entanglement response is limited. In contrast, commercial Dungeness crab trap buoys must be marked with state-issued buoy tags, which are more easily observed on entanglements involving commercial gear.

Furthermore, while fishing buoys used by commercial fishermen are relatively standardized, the recreational sector is not required under current regulations to use a certain buoy type. Thus, the recreational sector uses a variety of floatation devices, leading to inconsistency that also makes recreational gear difficult to identify during entanglement events.

The proposed regulatory changes are designed to implement simple, common-sense measures intended both to minimize the risk of entanglements in recreational crab fishing gear and to gather baseline information towards informing mitigation measures and future fishery management actions. The proposed regulations would apply to the recreational take of any crabs by trap.

The proposed regulations introduce five elements for the recreational crab fishery:

- enhanced gear marking with a more defined surface marker buoy system,
- an interval during which traps must be retrieved for servicing,
- a per-individual trap limit of 10 traps for each recreational crab trap operator,
- delegation of authority from the Commission to the Department's Director to allow modifications to the season to help minimize entanglements in the recreational crab fishery, and
- a validation ("stamp") program to allow collection of essential fishery information.

CURRENT REGULATIONS

Current regulations for rock crab and Dungeness crab specify seasons, size limits, bag and possession limits, closed fishing areas, and gear restrictions. Like most recreational fisheries, a recreational fishing license is the only license required to participate in recreational crab

fishing. In addition to traps, crabs can also be taken recreationally by hand, crab loop traps (snares), or hoop nets. Individuals are generally not allowed to operate a trap owned by another person unless they have in possession written permission from the owner.

Individual fishermen may fish using their own gear, or may join a scheduled fishing trip on a CPFV. CPFVs take customers on fishing trips and provide fishing gear for use by their clients or passengers. Subsection 29.85(a)(4) restricts the number of crab traps used to take Dungeness crab by a CPFV to 60. Subsection 29.85(a)(5) also requires the commercial boat registration number of the CPFV to be affixed to each trap and trap buoy deployed by that vessel. Traps not operated from CPFVs must be marked with buoys with the operator's GO ID number.

There is currently no limit to how many traps an individual may deploy, no required service interval (how often traps must be raised, cleaned and emptied), and no other buoy or trap marking requirements for recreational crab fishing.

PROPOSED REGULATIONS

The proposed regulations would establish restrictions to minimize entanglement risk as well as allow the state to collect data that would inform management of the crab fishery. The proposed regulations focus primarily on those recreational crab fishers who use and deploy traps to take crab. The proposal includes the following provisions:

- **Enhanced Gear Marking:** The proposed regulation would require all recreational crab traps be marked with a main buoy that is at least 5 inches in diameter and 11 inches in length and that a red marker buoy that is 3 inches in diameter and 5 inches in length be attached no more than three feet from the main buoy in order to help identify gear as originating from the recreational crab fishery should it entangle marine life. (Proposed subsection 29.80(c)(3))
- **Service Interval:** The proposed regulation would establish a maximum trap service interval of 9 days, which would help reduce lost and abandoned traps, and prevent fishers from storing gear at sea when not actively fishing and would prohibit abandoned traps. (Proposed subsection 29.80(c)(5))
- **Trap Limit:** The proposed regulation would establish an individual trap limit of 10 traps per operator which would reduce risk of entanglement by limiting the total number of vertical lines, and help determine a baseline effort for the recreational crab fishery. (Proposed subsection 29.80(c)(6))
- **Director Authority:** The Commission currently has exclusive management authority over the recreational crab fishery. Proposed subsection 29.80(c)(7) would provide authority for the Director of the Department, in consultation with the President of the Commission, to delay the fishery opener or close the season early in ocean waters of the state when the concentrations of Humpback whales, Blue whales, or Pacific Leatherback sea turtles exceed thresholds established in the Risk Assessment and Mitigation Program (Section 132.8). Proposed subsection 29.80(c)(7) states that before implementing a delay or closure, the recreational crab trap fishery will be given at least 5-days' notice through a Director's declaration on the Department's "Whale Safe Fisheries" webpage (<https://wildlife.ca.gov/Conservation/Marine/Whale-Safe-Fisheries>).

- **Trap Validation Program:** The proposed “Recreational Crab Trap Validation” program would require those individuals who fish for crabs with recreational crab traps to purchase an annual validation. The purpose of the proposed Recreational Crab Trap Validation would be to identify sport fishers that use crab traps so that the Department could conduct outreach on entanglement minimization efforts and collect essential fishery information. A small fee of \$2.25 would be required for each validation (proposed subsections 29.85(b) and 701(h)).

The proposed regulatory package also includes clarifying, organizational and non-substantive edits to sections 29.80, 29.85, and 701.

Amend Subsection 29.80(a)

Subsection 29.80(a) describes allowable methods of take for saltwater crustaceans. This subsection also makes it unlawful to disturb, move or damage any trap, or remove any saltwater crustacean from a trap that belongs to another person without written permission from the trap owner.

The current text specifically references the marking requirement under the current subsection (c)(3). Under the proposed regulations, the referenced text will be moved to (c)(3)(A)1., so an update to the language is necessary to maintain its original intent.

Amend Subsection 29.80(b)

Subsection 29.80(b) prescribes how hoop nets may be used to take saltwater crustaceans. The language limits the number of hoop nets a person may possess, and further prescribes the two configurations of hoop nets that can be used legally in California.

This proposal would remove the reference to subsections (b)(1)(A) and (b)(1)(B) within the main body of subsection (b). The reference is redundant since the referenced subsections immediately follow the paragraph in which the reference is listed. The same applies to the reference to subsections (b)(3)(A) and (b)(3)(B) within subsection (b)(3). The proposed revisions to this subsection would also remove the phrase “[t]hey shall be defined as” in subsection (b)(1). “They” in this context refers to hoop nets and is redundant since the first phrase of the subsection is “Hoop Net Defined.” A comma is removed after the word, “crab” to correct the punctuation.

The proposed amendments to this subsection are necessary for streamlining the regulation and improving clarity.

Amend Subsection 29.80(c)(3)

Subsection 29.80(c)(3) addresses crab trap specifications and means for deployment, including the requirement for a single buoy marked with the operator’s GO ID. However, recent entanglement events have demonstrated that this marking is inadequate for attribution of the entanglement to the recreational crab fisheries in the event of an entanglement.

Between 1982 and 2019, there have been 506 separate large whale entanglements along the U.S. West Coast which have been confirmed by the National Marine Fisheries Service (NMFS; Saez et al. 2020; NOAA Fisheries 2020; NOAA Fisheries 2019). Of those entanglements, the

gear type could not be identified in 44% of the cases. The California recreational crab fishery has been responsible for three known entanglements, and potentially more due to the difficulties of identifying recreational gear as outlined above. Uncertainty in verifying fishery gear types from entanglements significantly limits fishery managers' ability to implement any targeted management response. A standardized marker buoy on recreational crab traps would greatly enhance the ability to identify the fishing gear type in the event of an entanglement. (Figure 1).



Figure 1. Example of a main buoy attached to a marker buoy (left) and a commercial California Dungeness crab buoy tag (right). Since 2013, commercial California Dungeness crab traps have been marked with standardized buoy tags, which have proven useful for identifying fishing gear type in marine life entanglement cases.

Proposed revisions to subsection 29.80(c)(3) relocate the information on buoy identification and expand the buoy requirements for recreational crab traps. This regulatory proposal would add to the existing buoy requirement by requiring all traps to be marked with two buoys (main and marker buoys).

Proposed subsection 29.80(c)(3)(A) defines the “main buoy.” The specific dimensions of the buoy are proposed to be at least 5 inches in diameter and 11 inches in length, to be known as the main buoy. This minimum buoy size is available at most locations where fishing supplies are purchased and are commonly sold with crab traps.

Proposed subsection 29.80(c)(3)(A)1.: The language from current subsection (c)(3) is revised and relocated to this paragraph to state that an individual’s main buoy must be marked with the operator’s GO ID.

Proposed subsection 29.80(c)(3)(A)2.: The requirement for CPFV trap buoys to be labeled with the commercial boat registration number is moved from subsection 29.85(a)(5) to proposed subsection 29.80(c)(3)(A)2. This is a consolidation of the current requirement for CPFVs for buoy marking, and is necessary for placing all the buoy marking requirements in the same Section 29.80.

Proposed subsection 29.80(c)(3)(B) defines “marker buoy.” The marker buoy is a red buoy attached no more than 3 feet from the main buoy with dimensions of 3 inches in diameter and 5 inches in length (Figure 2).

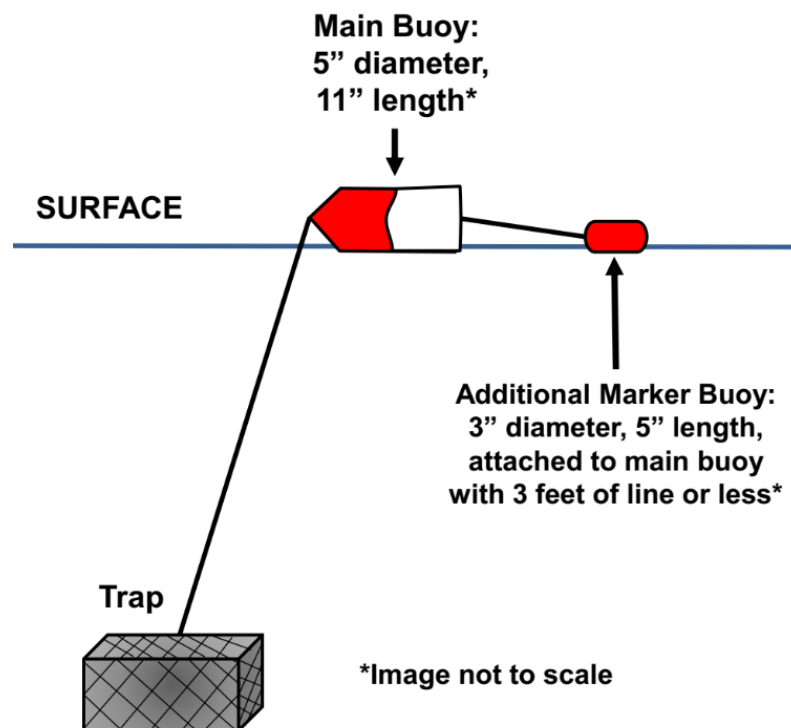


Figure 2. Diagram of main buoy and additional marker buoy attached to crab trap as proposed in regulations (*image not to scale).

This length of line will ensure that the main buoy and the marker buoy are likely to be viewed together in the event of an entanglement. Minimizing the length of line is also important to minimize risk of entanglement. These regulations would be consistent with end marker buoy regulations that the commercial fishery employs to designate the last traps located at the end of a row of deployed traps. The commercial buoys have similar dimensions although they can be any color and are required to be no more than 3 feet away from the main buoy or last trailer buoy as specified in subsections 132.6(a)(2) and (b).

Marker buoys are necessary to help identify recreational crab traps in the event of an entanglement. This buoy size and color were selected for marking recreational gear because such buoys are widely available at fishing supply stores.

Limiting the number of buoys to two is necessary to minimize risk of entanglement.

Proposed subsection 29.80(c)(3)(C): The requirement for CPFV traps themselves to be labeled with the commercial boat registration number is moved from subsection 29.85(a)(5). This is necessary to place all marking requirements in the same Section 29.80.



Figure 3. A main buoy marked with a marker buoy (top) versus a main buoy on its own. The addition of a marker buoy helps distinguish the buoy from a distance.

Add Subsection 29.80(c)(5)

Proposed subsection 29.80(c)(5) would add a 9-day maximum service interval to the recreational crab fishery and prohibit abandonment of traps in state waters. “Servicing” means raising the trap from the sea floor, cleaning the trap and related gear, and emptying out the trap. This 9-day service interval will help ensure regular tending and maintenance of recreational trap gear to reduce drifting or loss of the gear. Servicing of the trap can include removing fouling organisms, such as kelp, that may weigh down on the vertical line as well as re-baiting of traps, removing traps entirely from the ocean or redeploying traps to locations that better account for changing ocean conditions like large swells and storms. Lost and abandoned traps pose a long-term entanglement hazard for marine species, including ESA-protected species, long after the recreational crab fishing season ends. The 9-day period was chosen out of practical concerns for how the recreational fishery operates. Many participants

may only be able to check and retrieve traps during the weekends due to traditional weekday work schedules. A 9-day period thus covers two consecutive weekends, allowing crab trap operators at least two weekends to tend to their gear.

The proposed regulation mirrors Fish and Game Code (FGC) Section 9004, which establishes a maximum service interval for commercial trap fisheries. The statute has been in place for decades with firmly established enforcement practices. The servicing requirement is qualified by a weather exemption. The proposed regulatory text under subsection 29.80(c)(5) also exempts individuals from the service interval in the event of adverse weather to ensure individuals are not forced to choose between complying with a regulatory requirement and safety when ocean conditions are dangerous.

Add Subsection 29.80(c)(6) – Trap Limits

Proposed subsection 29.80(c)(6)(A) would add a 10-trap limit for each individual crab trap operator. The individual trap limit requirement is necessary to cap the number of deployed traps to a number a crab trap operator can responsibly deploy and still achieve a rewarding recreational experience. The individual trap limit requirement helps determine a baseline for recreational crab trap effort in the state. A trap limit also reduces the likelihood that a fisher will operate more traps than can be reasonably retrieved during a single fishing trip.

A trap limit may reduce the total number of deployed traps by individual fishers but will likely not reduce overall effort because of “trap sharing” within fisher groups. This proposed revision also makes it clear that an individual may service up to 10 traps from other operator(s), in addition to the 10 crab traps the individual is restricted to operate under the new crab trap limit. Any individual can currently service another person’s trap if that owner or operator provides a written note. This allows a fisher to operate additional traps in the event an owner is incapacitated. This proposed language is necessary to preserve the existing ability to share gear, as it is recognized that gear-sharing has become important for some fishers and may help reduce the overall number of traps deployed, in some circumstances. Discussions with constituent groups suggest that the option to share traps is important for certain segments of the recreational fishing community. However, allowing unlimited gear sharing would complicate law enforcement efforts, blur the responsibility of trap operators, and ultimately work to the detriment of the fishery, therefore servicing a maximum of another 10 crab traps is proposed.

While a 10-trap limit may not significantly reduce the total number of deployed traps, a trap limit in conjunction with a trap validation requirement (see below) can help determine the baseline effort level for this fishery, and prevent unlimited expansion of individual effort. The 10-trap limit was chosen based on extensive consultation with stakeholders, and is expected to accommodate fishing effort of most, if not all, recreational crab fishers. The lack of impact to existing fishing behavior is also supported by data from the California Recreational Fisheries Survey, which shows that between 2015 and 2019 the average number of traps used per boat-based fisher was less than two.

Proposed subsection 29.80(c)(6)(B) consolidates the new individual trap operator limit with the current trap limit for CPFVs, moving the existing maximum of 60 traps from subsection 29.85(a)(4) to subsection 29.80(c)(6). The trap limit for CPFVs will remain at the current 60 traps per vessel, but the limit will apply to all crab traps instead of only applying to Dungeness crab traps. Moving the CPFV 60-trap limit to this subsection is necessary to place

all the trap limit requirements (in addition to the buoy marking requirements) in the same section for ease of reference for recreational crab fishery participants. This regulation change will maintain the current trap limit for CPFVs of 60 traps but will apply the trap limit for the take of all crab species, and not just Dungeness crab. Typically, CPFVs will target Dungeness crab while other crabs could be caught incidentally in traps. Establishing that this trap limit is for the take of all crab would prohibit additional traps from being deployed from CPFVs that target other crab, which, if allowed could increase the number of deployed traps and entanglement risks.

Add Subsection 29.80(c)(7)

Proposed subsection 29.80(c)(7) would provide authority to the Director of the Department, after consulting with the President of the Commission, to respond to potential marine life entanglement risk. This allows the Director to possibly delay the recreational crab fishing season, or close the season early based on entanglement risk to Humpback whales, Blue whales, and/or Pacific Leatherback sea turtles. The proposed regulation uses the numerical triggers in subsection 132.8(c)(2), which is part of the Risk Assessment Mitigation Program (RAMP) (OAL Notice #Z2020-0505-11) that requires the delay or closure of the commercial Dungeness crab fishery when certain criteria are met for ESA-protected marine species.

The underlying structure of the RAMP was developed by the California Dungeness Crab Fishing Gear Working Group (Working Group) through a multi-year iterative process. The Working Group was convened in 2015 to address the increased rate of marine life entanglements in California commercial Dungeness crab fishing gear and is comprised of commercial and recreational fishermen, environmental organization representatives, state and federal agencies, and subject matter experts. Additionally, the RAMP has undergone extensive public outreach through the regulatory development process.

The RAMP was originally developed by the Working Group to assess circumstances where entanglement risk by the commercial sector may be elevated and provide recommendations on appropriate management responses for the Department's Director to take action (CDFW, 2020). Section 132.8 will formalize that management framework into regulation, allowing the Director to take actions to reduce entanglement risk when such risk is elevated (e.g., high concentration of Humpback whales in fishing grounds at the start of the fishing season, or in the spring/summer months). The RAMP rulemaking process is currently underway and is expected to be completed prior to the adoption of this proposal for the recreational sector (CDFW, 2020).

Due to the dynamic nature of ocean processes and the risk of entanglements, it is proposed that the regulatory authority to restrict fishing be delegated to the Director. Thus under this proposal, starting at least 5 days in advance of the opening of the recreational Dungeness crab fishing season pursuant to Section 29.85, the Director would, on at least a monthly basis, evaluate and respond to risk of marine life entanglements and, after consulting with the President, implement a management action in the case of elevated risk consistent with acceptable data and numerical triggers outlined in subsection 132.8(c)(2). This delegation of authority is necessary to provide for real-time response to environmental conditions as urgent as a potential whale entanglement, which is not possible under the Commission's regulatory process and Bagley-Keene Open Meeting Act requirements. During periods of elevated

entanglement risk, entanglements could occur within days of triggering events and the Commission decision-making process cannot be implemented as quickly as that of the executive officer of an agency (i.e., the Department's Director). Furthermore, managing a seasonal delay or early closure for the recreational fishery separately from the commercial Dungeness crab fishery which is already subject to RAMP would add an extra layer of complexity that could further impede the management process; whereas consolidating this entanglement risk management for both fisheries under the authority of the Director would implement a timely and coordinated response. Thus, the proposed regulation outlines a separate but parallel process that allows the Director to take coordinated action.

After the initial risk evaluation at least 5 days in advance of the start of the recreational Dungeness crab fishing season, the Director shall undertake additional evaluations at least monthly until the season opens statewide and March 1 through June 15. Experience from implementing pilot forms of the RAMP in the commercial fishery has shown that this time frame adequately allows for additional information gathering and analysis by the Department to evaluate risk. Additionally, the monthly evaluations cycle mirrors the requirements in the commercial fishery RAMP, and the Department anticipates matching up (to the extent possible) the risk evaluation process for the recreational and commercial fisheries. After June 15, the Department expects potential entanglement risk to be low given anecdotal information on recreational fishing effort at this point in the summer.

Add Subsection 29.80(c)(7)(A)

Proposed subsection 29.80(c)(7)(A) specifies that the Director shall evaluate risk based on marine life concentrations as defined in RAMP subsection 132.8(a)(10), and consistent with the data and numerical triggers outlined in subsection 132.8(c)(2). The RAMP triggers for marine life concentrations are based on the historical migration patterns of protected Humpback whales, Blue whales, and Pacific Leatherback sea turtles. Triggers are defined primarily for two time periods when ESA-protected species are expected to leave waters off California during the fall (November 1 through the opening of the commercial Dungeness crab season) and arrive back to those same waters in spring (March 1 through the close of the commercial Dungeness crab season). "Data" as described in subsection 132.8(c)(2) include those current surveys and telemetry monitoring of those ESA-protected species that the Director shall consider to determine marine life concentrations as information for choosing an appropriate recreational management action in response to entanglement risk (as determined by the triggers). This provides the most reliable and up-to-date information on presence of species of concern, which can indicate the need to take a recreational management action.

Under proposed subsection 29.80(c)(7)(A)1., if data are available prior to the start of the season, and those data indicate the numerical triggers for marine life concentrations outlined in subsection 132.8(c)(2) are met, the Director shall implement one of the recreational management actions listed under subsection 29.80(c)(7)(B). Potential actions include an advisory to recreational fishers, a season delay or a season closure. Under subsection 29.80(c)(7)(A)2., if data are unavailable, the Director shall similarly implement a recreational management action until data become available. If specific triggers are reached, then the resulting management actions could delay the start of the season, close the season early, or both. Ensuring that the Director will implement a recreational management action(s) when the different scenarios under subsections 29.80(c)(7)(A)1. and 29.80(c)(7)(A)2. are met provides

clarity to recreational fishers on how the Director would respond in the event of elevated risk, communicating the Director's responsibility to address an entanglement risk. This subsection is necessary to provide a framework for risk evaluation by the Director, and to explain the framework within which the Director may implement management actions in response to an entanglement risk. It provides for consistency with the framework for Director management action in the commercial sector.

Add Subsection 29.80(c)(7)(B)

If the conditions in subsection 29.80(c)(7)(A) are met, the Director is required to pick from one or more of the three potential recreational management actions listed in subsection 29.80(c)(7)(B). After consulting with the President, the Director shall implement the recreational management action that the Director demonstrates protects Humpback whales, Blue whales, and Pacific Leatherback sea turtles based on best available science. Rationale for the recreational management action is provided in the Director declaration (further discussed below). The appropriate recreational management action shall be determined based on consideration of information outlined in subsection 132.8(d).

- Under proposed subsection 29.80(c)(7)(B)1.: an advisory to recreational fishers to employ voluntary efforts to reduce the risk of entanglements. In certain instances, for example depending on the depth of the whales or sea turtles, a delay or closure of the recreational fishery is not necessary to address the entanglement risk. However, even under those circumstances, an advisory is necessary to remind fishers of important measures to reduce entanglement risk and avoid further management response.
- Under proposed subsection 29.80(c)(7)(B)2.: a season delay, and continuation of the crab trap prohibition in subsection 29.80(c)(4), whereby the Director shall prohibit the deployment and use of recreational crab traps until new data indicate the measures are no longer necessary. A season delay is appropriate in circumstances when before the opening of the recreational Dungeness crab season, marine life concentrations indicate that putting traps in the water would cause overlap between fishing activity and location of whales or sea turtles, which causes entanglement risk.
- Under proposed subsection 29.80(c)(7)(B)3.: a season closure, whereby the Director shall prohibit the deployment and use of recreational crab traps until new data indicate the measures are no longer necessary or the end of the normal recreational Dungeness crab season. A season closure would be implemented after the opening of the season when marine life concentrations indicate removing traps is necessary to address an entanglement risk.

This subsection is necessary to make clear to recreational crab fishery participants what recreational management action(s) the Director may implement given the triggers for marine life concentrations under the risk assessment framework of RAMP referenced in Section 132.8. Additionally, it provides clarity on the duration of a recreational management action (i.e. until new data indicate the triggers are no longer met).

Add subsection 29.80(c)(7)(C)

The marine life concentration trigger under RAMP is determined by the number of Humpback whales, Blue whales, or Pacific Leatherback sea turtles that occur in one of seven delineated fishing zones (Figure 4), one of which applies exclusively to the Pacific leatherback sea turtle

(Zone 7). Proposed subsection 29.80(c)(7)(C) describes the geographic scale in crab fishing grounds at which a recreational management action may be implemented by the Director, either statewide or by fishing zone as defined in subsections 132.8(a)(7)(A)-(G). The zones are designed around the likely geographic resolution of available data, and behavioral dynamics of both fishing activities and protected species.

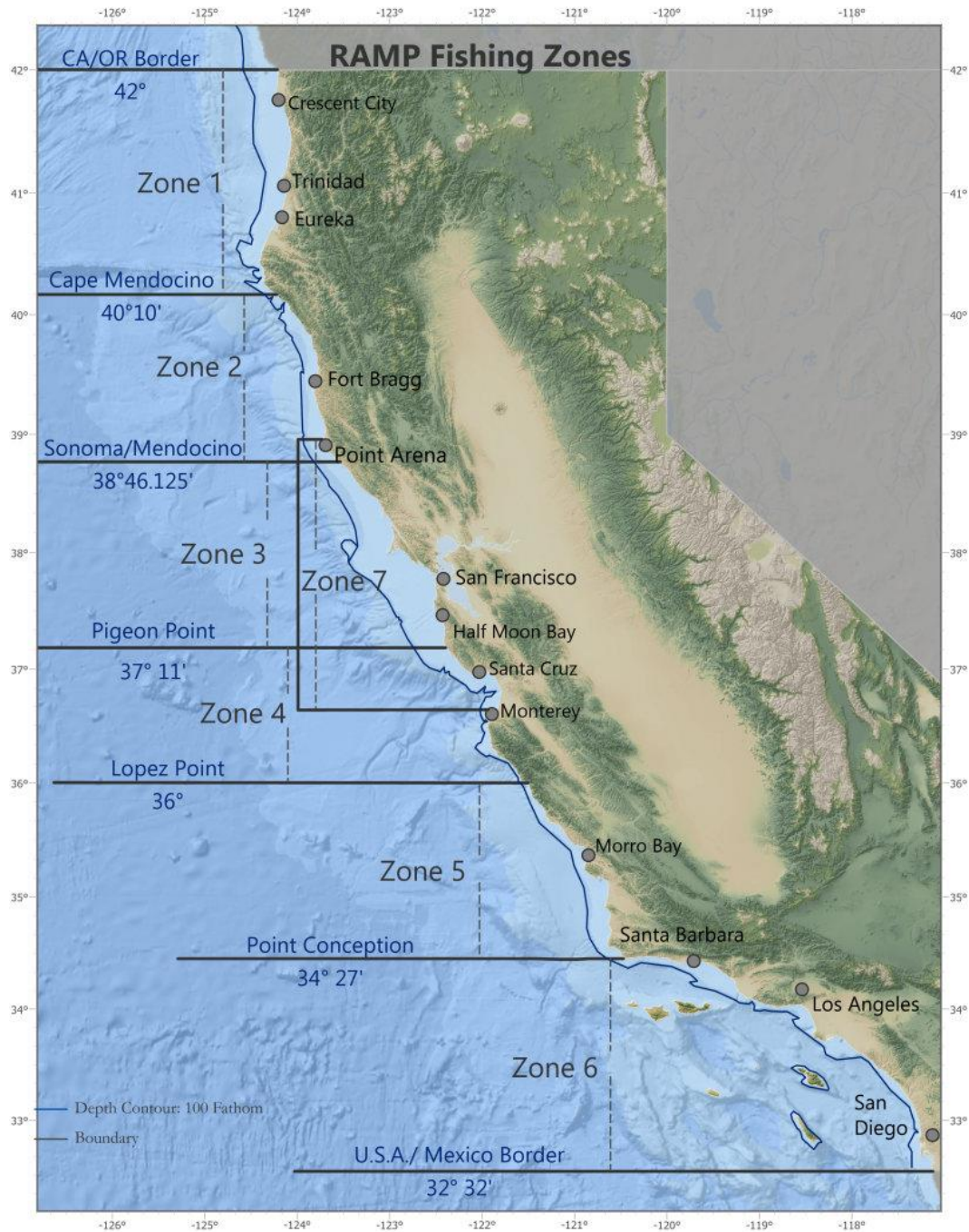


Figure 4. Proposed RAMP Fishing Zones.

If the Director demonstrates less-than-statewide action protects Humpback whales, Blue whales, and Pacific Leatherback sea turtles based on best available science, the Director may implement a recreational management action by fishing zone(s). For example, survey data may indicate that whale presence is concentrated in the fishing zone encompassing Monterey

Bay, but no whales were surveyed in the northern coast. In that instance, a fishing zone closure would appropriately address the entanglement risk while leaving recreational fishing opportunities available in other areas of the state where data indicate there is not an entanglement risk.

This subsection is necessary to make clear to recreational crab fishery participants what geographic scale a recreational management action may encompass.

Add Subsection 29.80(c)(7)(D)

Proposed subsection 29.80(c)(7)(D) requires the Director to provide notice of a recreational management action to the recreational fishery participants through a Director's declaration. Similar to the declaration prescribed in subsection 132.8(f)(1) for the commercial fishery, the recreational declaration will provide the information relied upon for recreational management action and supporting rationale for the Director's determination of risk and accompanying recreational management action, as well as anticipated duration of the recreational management action. If timing allows, the Department anticipates the recreational declaration will be paired with the commercial declaration for efficiencies in internal processing.

This subsection is necessary to specify how the Director and the Department will clearly articulate the basis and rationale for any decision on recreational management actions. This will ensure transparency to interested stakeholders and provide a record of decision-making.

Add Subsection 29.80(c)(7)(E)

Proposed subsection 29.80(c)(8) will require any declaration made by the Director pursuant to subsection 29.80(c)(7)(D) to include a minimum of 5-days' notice before any closure or delay takes effect. This notice is necessary to establish a reasonable time period for recreational fishery participants to receive the notice and make preparations to implement any required modification to their fishing practices.

Add Subsection 29.80(c)(7)(F)

Proposed subsection 29.80(c)(9) will require all advisory notices and declarations made by the Director pursuant to subsection 29.80(c)(7)(D) to be posted on the Department's "Whale Safe Fisheries" webpage, located at <https://wildlife.ca.gov/Conservation/Marine/Whale-Safe-Fisheries>. This subsection is necessary to inform recreational fishers of where to find the most up-to-date information on any recreational management actions. Posting to the webpage is the most efficient way to quickly provide notification of any advisory notice, Director's declaration or other recreational management action made by the Department. However, at its discretion, the Department may also provide notification through other means.

Add Subsection 29.80(c)(7)(G)

Proposed subsection 29.80(c)(10) will require the Director to notify the Commission of any actions taken and request the Commission schedule a public discussion of any such action at the next regularly-scheduled Commission meeting.

Amend Subsection 29.80(e)

The revision to subsection 29.80(e) removes the reference to 29.85 regarding take of crabs from commercial passenger fishing vessels, as that language was moved to subsection 29.80(c)(3) for consolidation purposes.

Amend Subsection 29.85(a)(1)

The term “Closure” is proposed to be removed from subsection 29.85(a)(1). As explained above for subsection 29.80(c)(7)(B), this rulemaking would add a new type of closure/season delay for the recreational crab fishery. It is necessary to remove the term “Closure” under in subsection 29.85(a)(1) to avoid confusion with a closure pursuant to proposed subsection 29.80(c)(7)(B). The removal will not lead to any substantive change to the regulation.

Add New Subsection 29.85(a)

Proposed subsection 29.85(a) would require anyone who takes crab recreationally using crab traps to possess a valid Recreational Crab Trap Validation. The validation is an add-on to a recreational fishing license, and will alert Department staff that the individual intends to participate in the recreational crab fishery using crab traps. The proposed trap validation would be valid for current license year and will only be needed for those that take crab recreationally using crab traps pursuant to subsection 29.80(c).

Department staff will be able to target validation holders with surveys to obtain essential fisheries data, and potentially share information to help minimize entanglement risk (i.e., the Director’s declarations or fishery advisories pursuant to subsection 29.80(c)(7)).

Information on recreational crab fishery effort, such as where and how many traps are deployed, can help the Department evaluate whether there is substantial overlap between fishing areas and key forage habitats of the protected species. Moreover, the validation along with the trap limit will allow Department staff to acquire essential fishery information, such as the number of participants, maximum trap effort and the level of take each year, which has not been formally accounted for in this fishery. Acquiring such information will allow the state to better monitor the direct and incidental impacts the fishery has on the natural environment through the use of traps in the recreational fishery, as well as its value to California’s coastal economy, ultimately resulting in management more consistent with the state’s marine life management goals.

Repeal Subsection 29.85(a)(4)-(5)

Trap limit and marking requirements for the recreational crab fishery would be consolidated under subsection 29.80(c)(6). Subsections 29.85(a)(4) and (a)(5), which prescribe such trap limits and marking requirements for CPFVs, would also be moved to Section 29.80 accordingly. Moving these two subsections is necessary to consolidate and streamline the regulation so recreational crab fishers can refer to such requirements in a single section.

Renumber Subsections 29.85(a)-(e)

Current subsections 29.85(a), (b), (c), (d), and (e) will be renumbered to accommodate new subsection 29.85(a).

Amend Subsections 29.85(b)(2) and (c)(1)

Renumbered subsections 29.85(b)(2) and (c)(1) would be amended to add a reference to the Director's authority to delay or close the recreational crab trap season. These additions are necessary to ensure recreational crab fishers are aware of the potential closures.

Amend Section 701

A nominal fee will be assessed for the Recreational Crab Trap Validation to cover its administrative cost. The fee will be added as subsection 701(h), and the original subsection (h) will be renumbered as subsection (i). The fee is proposed to be \$2.25. See the Addendum to the STD. 399 for the fee determination calculation. This fee amount may be adjusted in the future as the Department develops a better understanding of the number of participants of the recreational crab fishery and is subject to annual adjustments pursuant to Section 699, Title 14, CCR.

Changes Without Regulatory Effect

Reference citations are being updated to better reflect the statutes being implemented, interpreted, and made specific. Section 110 of the Fish and Game Code (FGC) is being removed from the list of reference sections for sections 29.80, 29.85 and 701. Prior to January 1, 2007, Section 206 FGC outlined the Commission process for the adoption of sport fishing regulations. In 2006, Senate Bill (SB) 1535 repealed Section 206 and added a new Section 206 which outlined the Commission's general meeting schedule. In 2016 legislation (SB 1473), the then-current Section 206 FGC was amended and renumbered as Section 110 FGC. When updates to the authority and reference citations were made in rulemaking file 2017-0818-05S, staff inadvertently changed Section 206 FGC to Section 110 FGC. Section 1055 FGC is being replaced with Section 1055.1 FGC in the reference sections for Section 701 due to the repeal of Section 1055 FGC and addition of Section 1055.1 in 2015 legislation (SB 798).

(b) Goals and Benefits of the Regulation

It is the policy of this state to conserve, protect, restore, and enhance any endangered species or any threatened species and its habitat.

The proposed regulation would help reduce the entanglement risk posed by recreational crab traps towards marine animals protected by the federal Endangered Species Act and Marine Mammal Protection Act. The proposed regulations would also help the state obtain valuable information on recreational crab fishery participants. The information acquired would help the state better mitigate entanglement risk as well as better manage the crab fisheries overall to meet the state's various policy goals.

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

Authority: Sections 200, 205, 265, 270, 275, 713, 1050, 1053.1, 7075, 7078 and 7149.8, Fish and Game Code

Reference: Sections 200, 205, 265, 270, 275, 713, 1050, 1053.1, 1055.1, 7050, 7055, 7056 and 7149.8, Fish and Game Code

(d) Specific Technology or Equipment Required by Regulatory Change

Under subsection 29.80(c), new buoy requirements include the designation of the existing buoy requirement to be the “main buoy,” and add specific minimum dimensions (5 inches diameter, 11 inches in length). The addition of the “marker buoy” to all recreational crab main buoys is intended to be the distinguishing characteristic of the fishery.

(e) Identification of Reports or Documents Supporting Regulation Change

California Department of Fish and Wildlife. 2019. Dungeness Crab, *Metacarcinus magister*, Enhanced Status Report. Available from <https://marinespecies.wildlife.ca.gov/dungeness-crab/>

California Department of Fish and Wildlife. 2020. Initial Statement of Reasons for Regulatory Action to Add Section 132.8, Title 14, California Code of Regulations, Re Risk Assessment Mitigation Program: Commercial Dungeness Crab Fishery. Available from <https://wildlife.ca.gov/Notices/Regulations/RAMP>

Documents Supporting RAMP regulation change:

- Senate Bill 1309, 2018, McGuire:
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1309
- Benson, S.R., K.A. Forney, J.T. Harvey, J.V. Carretta, and P.H. Dutton (2007). Abundance, distribution, and habitat of leatherback turtles (*Dermochelys coriacea*) off California, 1990-2003. *Fishery Bulletin*, 105(3): 337–347.
- Calambokidis, J., G.H. Steiger, C. Curtice, J. Harrison, M.C. Ferguson, E. Becker, M. DeAngelis, and S.M. Van Parijs. 2015. Biologically Important Areas for Selected Cetaceans Within U.S. Waters – West Coast Region. *Aquatic Mammals*, 41(1): 39-53. DOI 10.1578/AM.41.1.2015.39
- Carretta, J. V., K.A. Forney, E.M. Oleson, D.W. Weller, A.R. Lang, J. Baker, M.M. Muto, B. Hanson, A.J. Orr, H. Huber, M.S. Lowry, J. Barlow, J.E. Moore, D. Lynch, L. Carswell, and R.L. Brownell Jr. 2019. Humpback Whale (*Megaptera novaengliae*): California/ Oregon/ Washington Stock (pp. 173-182), and Blue Whale (*Balaenoptera musculus musculus*): Eastern North Pacific Stock (pp. 183-190), *In* Assessment U.S. Pacific Marine Mammal Stock Assessments: 2018. U.S. Department of Commerce, NOAA Technical Memorandum NMFSSWFSC-617.
- California Dungeness Crab Fishing Gear Working Group, Guidelines for Research and Development Projects, Focus on Ropeless Gear Innovations, Feb 2019:
http://www.opc.ca.gov/webmaster/ media_library/2019/02/Whales-Gear-Innovations-R-and-D-Guidelines-February-2019.pdf
- California Dungeness Crab Fishing Gear Working Group, Recommendations Memo, November 12, 2019:
http://www.opc.ca.gov/webmaster/ media_library/2019/11/CAWhaleWorkingGroup_HighlightsRecommendationsMemo_SeptOct2019_FINAL.pdf

- California Dungeness Crab Fishing Gear Working Group, Recommendations Memo, October 15, 2018:
http://www.opc.ca.gov/webmaster/media_library/2018/10/Whales_WorkingGroupRecommendationsMemo_October2018_FINAL.pdf
- California Dungeness Crab Fishing Gear Working Group, Call Summary, September 26, 2019:
http://www.opc.ca.gov/webmaster/media_library/2019/10/CAWorkingGroup_WebinarSummary_Sept262019.pdf
- California Dungeness Crab Fishing Gear Working Group, Summary of Key Themes, September 4-5, 2019:
http://www.opc.ca.gov/webmaster/media_library/2019/10/CAWorkingGroup_KeyThemesSummary_FINAL_Sept4-52019.pdf
- California Dungeness Crab Fishing Gear Working Group, Summary of Key Themes, March 26, 2019:
http://www.opc.ca.gov/webmaster/media_library/2019/04/CAWhaleWorkingGroup_KeyThemesSummary_26March2019Meeting_FINAL.pdf
- California Dungeness Crab Fishing Gear Working Group Risk Assessment and Recommendation
<https://www.wildlife.ca.gov/Conservation/Marine/Whale-Safe-Fisheries>
- California Ocean Protection Council, Strategic Plan to Protect California's Coast and Ocean 2020-2025
http://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20200226/OPC2020-2025-Strategic-Plan-FINAL-20200228.pdf
- NMFS, 2020. West Coast Region Protected Resources Division, Draft Serious Injury Mortality Report, July 13, 2020. Available from:
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=180688>
- NMFS, 2012a. NMFS Policy Directive (PD-02-038), Process for Distinguishing Serious from Non-Serious Injury of Marine Mammals, effective January 27, 2012, available from:
https://www.avma.org/sites/default/files/resources/noaa_serious_injury_policy.pdf
- NMFS, 2012b. NMFS Instruction (02-038-01), Process for Distinguishing Serious from Non-Serious Injury of Marine Mammals: Process for Injury Determinations, effective January 27, 2012, available from:
<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-policies-guidance-and-regulations>
- Saez, L., D. Lawson, and M. DeAngelis. 2020. Large whale entanglements off the U.S. West Coast, from 1982-2017. NOAA Tech. Memo. NMFS-OPR-63, 48 p. Available from
<https://www.fisheries.noaa.gov/resource/document/large-whale-entanglements-us-west-coast-1982-2017>
- 64 Federal Register 102, May 27, 1999. North Pacific Fishery Management Council; Public Meetings, pages 28800-28802. Available from:
<https://www.govinfo.gov/content/pkg/FR-1999-05-27/pdf/FR-1999-05-27.pdf>
- 77 Federal Register 4169, January 26, 2012. NOAA Endangered and Threatened Species: Final rule to revise the critical habitat designation for the endangered

Leatherback Sea Turtle, pages 4170-4201. Available from <https://www.govinfo.gov/content/pkg/FR-2012-01-26/pdf/2012-995.pdf>

NOAA Fisheries. 2020. 2019 West Coast Whale Entanglement Summary. Available from <https://www.fisheries.noaa.gov/resource/document/2019-west-coast-whale-entanglement-summary-and-infographic>

NOAA Fisheries. 2019. 2018 West Coast Whale Entanglement Summary. Available from <https://www.fisheries.noaa.gov/resource/document/2018-west-coast-whale-entanglement-summary>

(f) Identification of Reports or Documents Providing Background Information:

Santora, J. A., Mantua, N. J., Schroeder, I. D., *et al.* (2020). Habitat compression and ecosystem shifts as potential links between marine heatwave and record whale entanglements. *Nature communications*, 11(1), 1-12. Available from <https://www.nature.com/articles/s41467-019-14215-w>

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

- November 5, 2019: Commission Marine Resources Committee meeting in Sacramento.
- December 3, 2019: Public webinar to discuss proposed regulations.
- December 12, 2019: Fish and Game Commission meeting in Sacramento.
- January 6, 2020: Workshop with representatives of the recreational sector in Sacramento.
- January 11, 2020: Workshop with representatives of the recreational sector in Sausalito.
- January 23, 2020: Workshop with representatives of the recreational sector in Eureka.
- March 17, 2020: Commission Marine Resources Committee webinar.
- March 19, 2020: CA Dungeness Crab Fishing Gear Working Group teleconference.
- April 16, 2020: Fish and Game Commission teleconference.
- June 24, 2020: Fish and Game Commission webinar/teleconference.

On May 11, 2020, the Department provided formal notice to California tribal governments regarding the development of the proposed regulations and requested preliminary input by June 15, 2020. As of the date on this Initial Statement of Reasons, no requests for government-to-government consultation have been received. Four tribal governments did contact the Department: Santa Ynez Band of Chumash Indians, Yocha Dehe Wintun Nation, Manchester Band of Pomo Indians, and Federated Indians of Graton Rancheria. Three tribal governments had questions about the intent or background of the rulemaking proposals which the Department was able to provide. A fourth tribal government voiced its support for measures to protect marine animals.

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

Alternative 1:

Adoption of a trap limit that would appreciably reduce the number of recreational crab traps deployed in the ocean. Initial discussions included a range from three to ten traps. Based on stakeholder feedback, a more stringent trap reduction would constrain an fishers' ability to share gear with family and friends during fishing trips. Allowing individuals to share gear with other fishers may also help to limit the total number of traps fished by area. As a result, a lower trap limit was rejected. The issue of gear sharing may be addressed in a future rulemaking.

Alternative 2:

Requiring that *all* crab fishers, not just those fishing with crab traps, obtain the validation. There are many unknowns about the number of individuals fishing with the various methods and the validation would provide an opportunity for information gathering. However, the purpose of the regulation is to gather information to inform ways of minimizing whale entanglement risk, and crab fishers using methods other than crab traps deployed from boats have no known contribution to that risk. Therefore, this alternative was rejected.

Alternative 3:

A Recreational Crab Trap Validation "sunset" date. The intent of the validation is to gather information to inform the Department on recreational crab trap fishing effort and to document the crab trap fishery participants for the purpose of communication of Director's declarations, advisories to recreational fishers, etc. Due to the likelihood of ongoing entanglement risk as well as the need to obtain ongoing information for the orderly management of the fishery, continued data collection is essential for maintaining consistent seasonal communication with fishery participants. As a result, a sunset provision was rejected. If the validation ever outlives its purpose, it can be eliminated in a future rulemaking.

Alternative 4:

A recreational gear retrieval program which would remove lost and/or abandoned recreational crab trap gear. The commercial gear retrieval program started for the first time on May 22, 2020. Before layering on an additional program, the Department wants to implement and evaluate the current program to determine if there are any changes that need to be made. Additionally, the Department has not conducted outreach on this alternative, and it was not included in the initial proposals that have been discussed with the recreational fishery participants dating back to July of 2019. The buoy marking aspect in this rulemaking needs to be implemented so that gear can clearly be identified before a retrieval program is established. Lastly, prior to implementing this type of program, considerations of Commission authority need to be further explored to ensure a retrieval program can be appropriately implemented. For these reasons, this alternative was rejected.

Alternative 5:

Inclusion of specific regulatory language banning the use of plastic liquid containers such as used milk jugs or detergent bottles as main buoys. These items are not intended to serve as buoys, nor built for the harsh conditions of the marine environment and may easily contribute

to gear loss. However, the difficulty of developing adequate regulatory language led to the rejection of this alternative at this time.

Alternative 6:

Marking recreational traps with tags or lettering. These methods are already being used to mark commercial gear. Department staff were concerned that using either tags or lettering would lead to the traps being conflated with commercial gear in the event of an entanglement and this alternative was rejected.

Alternative 7:

The development of an independent recreational counterpart to RAMP. This alternative was rejected due to the lack of an identifiable trigger unique to the recreational fishery. The recreational and commercial fisheries operate using similar, if not identical gear, and over the same fishing grounds at roughly the same time of year. As such, the Department is recommending use of the established RAMP program to inform a management action in the recreational fishery using only the Marine Life Concentrations trigger in the RAMP.

(b) No Change Alternative

Without change, the recreational crab fishery will maintain the same level of entanglement risk for ESA-protected species, and the Department and Commission will continue to lack baseline information regarding the fishery that could inform a management action to address risk. When entanglement risk is elevated, the quickest regulatory response would be through emergency regulations, providing stakeholders with a shortened opportunity for input. While the emergency rulemaking process is faster than a regular rulemaking, it still would not be responsive enough to address the immediate threat of entanglement when large whales and sea turtles are actively migrating along the coast.

(c) Description of Reasonable Alternatives that Would Lessen Adverse Impact on Small Business

No reasonable alternatives that would lessen adverse impacts on small businesses were identified by or brought to the attention of Department or Commission staff.

V. Mitigation Measures Required by Regulatory Action

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures 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 because the proposed regulations are for a recreational marine fishery and are not

anticipated to change the level of fishing activity. CPFVs that take fishers on crab fishing trips would be required to attach additional buoys to crab trap lines at a cost of \$4.00 per buoy for up to the maximum 60 traps per vessel, resulting in industry costs of \$15,360 in initial costs and approximately \$7,680 in subsequent years to replace lost or damaged buoys. The additional costs for CPFVs to purchase marker buoys is not anticipated to be significant because these costs are a very small share of CPFV operating costs and would not change procedure. As a result of fishing season closures or delays, CPFV operations could be impacted depending on the percentage of their group fishing trips that are solely or predominantly for crab trapping. Vessels that pursue multiple species could more readily shift effort away from trap-taken crabs should crab season delays or closures occur. These impacts are not anticipated to be more than those due to the typical season variation due to weather and other unknown influences.

(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 Commission 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 because the proposed regulations are not anticipated to affect the volume of recreational crab trapping activity nor result in significant costs to CPFVs that serve recreational crab trappers.

The Commission does not anticipate any benefits to the health and welfare of California residents or to worker safety.

The Commission anticipates benefits to the state's environment by reducing the potential for marine life entanglement in recreational fishing gear.

(c) Cost Impacts on a Representative Private Person or Business

Recreational crab fishers would be required to purchase a \$2.25 Recreational Crab Trap Validation annually to participate in any crab trap fishery. Fishers may also incur costs for up to ten buoys at approximately \$4.00 each if they elect to fish the maximum number of traps. The proposed changes are not expected to change the level of fishing activity. CPFVs that take individual fishers on crab fishing trips would be required to attach additional buoys to crab trap lines at a cost of \$4.00 per buoy for up to the maximum 60 traps, summing to \$240 in initial costs and approximately \$120 in subsequent years to replace lost or damaged buoys.

The proposed regulation also includes the provision of authority for the Director of the Department to take action to reduce the risk of marine life entanglement. This component of the regulation is not anticipated to have cost impacts to individuals. However, CPFV operations could be impacted depending on the percentage of their group fishing trips that are solely or predominantly for crab trapping. Vessels that pursue multiple species could more readily shift effort away from trap-taken crabs should crab season delays or closures occur.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State

The proposed regulations are anticipated to introduce some start-up and ongoing implementation and enforcement costs that will be re-covered with the proposed Recreational Crab Trap validation program. An estimated additional \$13,500 in validation revenue is anticipated to be collected by the Department. The Commission does not anticipate any savings to State agencies or costs/savings in 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.

VII. Economic Impact Assessment

The principal intent of the proposed regulation is to minimize entanglement risks as well as to improve marine resource management through the collection of key fishery activity information. Department recreational fishing survey data indicate that at least 6,000 individuals engage in recreational crab trap fishing and would be affected by changes in requirements regarding: enhanced gear marking; service intervals; trap limits; Director authority to restrict take; and a new validation program. CPFV operators provide recreational fishing trips for dozens of ocean species, and those who provide crab trapping (average of 64 vessels per 2010-2019 CPFV log data), would also be directly affected by the proposed regulations. CPFVs operating in California are characterized as small businesses (per CA Government Code Article 2, Section 11342.610) as all are independently owned and operated and not dominant in its field of operation.

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

The Commission does not anticipate impacts on the creation or elimination of jobs within the state because the proposed regulations are for a recreational marine fishery and are not anticipated to change the level of fishing activity. The additional costs for CPFVs to purchase marker buoys is not anticipated to result in the creation or elimination of jobs because these costs are a very small share of CPFV operating costs and would not change procedures so as to require more or less labor. As a result of fishing season closures or delays, CPFV operations could be impacted depending on the percentage of their group fishing trips that are solely or predominantly for crab trapping. Vessels that pursue multiple species could more readily shift effort away from trap-taken crabs should crab season delays or closures occur. Impacts to the creation or elimination of jobs are not anticipated because the number of CPFV

trips are not anticipated to change more than the typical seasonal variation due to weather and other unknown influences.

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

The Commission does not anticipate any new businesses, or elimination of existing businesses, because the proposed regulation is not likely to substantially increase or decrease recreational fishing activity within the state. The additional costs for CPFVs to purchase marker buoys is not anticipated to result in the creation or elimination of businesses because costs are a very small share of CPFV operating costs and the supply of buoys is already sufficient to fulfill this requirement. As a result of fishing season closures or delays, CPFV operations could be impacted depending on the percentage of their group fishing trips that are solely or predominantly for crab trapping. Vessels that pursue multiple species could more readily shift effort away from trap-taken crabs should crab season delays or closures occur. However, this is not anticipated to result in the creation or elimination of businesses because the number of CPFV trips are not anticipated to change more than the typical seasonal variation due to weather and other unknown influences.

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

The Commission does not anticipate any effects on the expansion of businesses currently doing business in the State because the proposed regulation is not likely to substantially increase or decrease recreational fishing activity within the State.

The additional costs for CPFVs to purchase marker buoys is not anticipated to result in the expansion of businesses because costs are a very small share of CPFV operating costs, and the supply of buoys is already sufficient to fulfill this requirement. As a result of fishing season closures or delays, CPFV operations could be impacted depending on the percentage of their group fishing trips that are solely or predominantly for crab trapping. Vessels that pursue multiple species could more readily shift effort away from trap-taken crabs should crab season delays or closures occur. However, this is not anticipated to result in the expansion of businesses because the number of CPFV trips are not anticipated to change more than the typical seasonal variation due to weather and other unknown influences.

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

The Commission does not anticipate any benefits to the health and welfare of California residents.

(e) Benefits of the Regulation to Worker Safety

The Commission does not anticipate any benefits to worker safety because the proposed regulation does not affect existing working conditions.

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

The regulation is anticipated to benefit the State's environment by reducing the potential for entanglements of ESA-protected marine life species in fishing gear.

Informative Digest/Policy Statement Overview

Current regulations for the recreational take of rock crab and Dungeness crab specify seasons, size limits, bag and possession limits, closed fishing areas, and gear restrictions. Like most recreational fisheries, a recreational fishing license is the only license required to participate in recreational crab fishing. In addition to traps, crabs can also be taken recreationally by hand, crab loop traps (snares), or hoop nets. Individuals are generally not allowed to operate a trap owned by another person unless they have in possession written permission from the owner.

Individual fishermen may fish using their own gear, or may join a scheduled fishing trip on a Commercial Passenger Fishing Vessel (CPFV). CPFVs take customers on fishing trips and provide fishing gear for use by their clients or passengers. Current regulations limit the number of crab traps used to take Dungeness crab by a CPFV to 60 and specify that the commercial boat registration number of the CPFV must be affixed to each trap and trap buoy deployed by that vessel. Current regulations specify that traps not operated from CPFVs must be marked with buoys with the operator's GO ID number.

There is currently no limit to how many traps an individual may deploy, no required service interval (how often traps must be raised, cleaned and emptied), and no other buoy or trap marking requirements for recreational crab fishing.

The Fish and Game Commission (Commission) and the Department of Fish and Wildlife (Department) are proposing to amend sections 29.80, 29.85, and 701, Title 14, California Code of Regulations (CCR). The proposed regulatory changes would be the first step in addressing entanglement risk posed by the recreational crab fishery in California towards species listed under the federal Endangered Species Act (ESA). Between 2014 and 2019, three Humpback whale entanglements were attributed to the recreational crab fishery in California. The proposal would also allow the Department to gather essential fishery information.

The fishing gear responsible for entanglement could not be identified in 44% of all confirmed entanglements between 1982 and 2017, and the recreational crab fishery may be responsible in some of these instances. This uncertainty, along with the scarcity of essential fishery information, makes development of mitigation measures very difficult.

The proposed regulations would establish some restrictions to minimize entanglement risks as well as allow the state to collect crucial information that would contribute to future management. The proposed regulations include the following provisions:

- **Enhanced Gear Marking:** Proposed subsection 29.80(c)(3), Title 14, CCR, would require all recreational crab traps be marked with a main buoy that is at least 5 inches in diameter and 11 inches in length and that a red marker buoy that is 3 inches in diameter and 5 inches in length be attached no more than three feet from the main buoy. Current regulation requiring buoy marking, and in the case of CPFV's, trap marking, would be consolidated in this subsection.
- **Service Interval:** Proposed subsection 29.80(c)(5), Title 14, CCR, would establish a maximum service interval of 9 days, weather conditions at sea permitting, and would prohibit abandoned traps.
- **Trap Limit:** Proposed subsection 29.80(c)(6), Title 14, CCR, would establish an individual trap limit of 10 traps. The current 60-trap limit for Commercial Passenger Fishing Vessels (CPFVs)

targeting Dungeness crab will be moved from subsection 29.85(a)(4) to this subsection and will apply to CPFVs targeting any crab. The proposed regulation would allow an individual to service up to 10 additional traps if they possess written permission from the operator(s) of the additional traps whose gear are identified in accordance with subsection 29.80(c)(3).

- **Director Authority:** Proposed subsection 29.80(c)(7), Title 14, CCR, would provide authority for the Director of the Department, after consulting with the President of the Commission, to delay the fishery opener or close the season early in ocean waters of the state when the concentrations of Humpback whales, Blue whales, or Pacific Leatherback sea turtles exceed thresholds established in the Risk Assessment and Mitigation Program (Section 132.8, Title 14, CCR). Starting at least 5 days in advance of the opening of the recreational Dungeness crab fishing season, the Director shall, on at least a monthly basis until the season opens statewide and March 1 through June 15, evaluate and respond to risk. Any delay or closure could apply statewide or by zone(s). The proposed regulation provides that before implementing a delay or closure, the recreational crab trap fishery will be given at least 5-days' notice through a Director's declaration on the Department's "Whale Safe Fisheries" webpage (<https://wildlife.ca.gov/Conservation/Marine/Whale-Safe-Fisheries>). In addition, the Director will notify the Commission of any actions taken and request the Commission schedule a public discussion of any such action at the next regularly-scheduled Commission meeting. References to this authority will be added to subsections 29.85(b)(2) and (c)(1).
- **Trap Validation Program:** Proposed subsections 29.85(b) and 701(h), Title 14, CCR, would establish a "Recreational Crab Trap Validation" program that would require those individuals who fish for crabs with recreational crab traps to purchase an annual validation. A small fee of \$2.25 would be required for each validation.

The proposed regulatory package also includes clarifying, organizational and non-substantive edits to sections 29.80, 29.85, and 701, Title 14, CCR.

Benefits of the Regulations

The proposed regulation would help reduce marine life entanglement caused by the recreational crab fishery. It would also establish a framework by which the Commission and the Department can collect the requisite information to better manage the fishery to further reduce entanglement and to better meet the state's fishery management goals.

Consistency and Compatibility with Existing Regulations

Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated authority to the Commission to promulgate sport fishing regulations (Fish and Game Code sections 200, 205, 315, and 316.5). Commission staff has searched the California Code of Regulations and has found no other state regulations that address the recreational take of crabs using trap gear. The Commission has reviewed its own regulations and finds that the proposed regulations are consistent with other recreational fishing regulations and marine protected area regulations in Title 14, CCR, and therefore finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.