

State of California
Fish and Game Commission
Final 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. Dates of Statements of Reasons

- (a) Initial Statement of Reasons Date: September 10, 2020
- (b) Pre-adoption Statement of Reasons Date: November 30, 2020
- (c) Final Statement of Reasons Date: May 15, 2021

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. Update

At its December 9, 2020 meeting, the Fish and Game Commission (Commission) adopted the proposed regulations, as set forth in the Initial Statement of Reasons (ISOR) dated September 10, 2020.

Pursuant to Government Code Section 11346.8, sufficiently related changes to Section 29.80 and 29.85, Title 14, CCR, as well as updates to the economic impact analyses in response to public comment, were provided in a 15-day continuation notice (March 5-22, 2021). The changes are technical in nature and do not change the intent of the regulation. The amendments are clarified below:

- 1. In the originally proposed language, “for Recreational Take of Saltwater Crustaceans” was added at the end of the title of Section 29.80; however, the addition was not illustrated in underline format. This addition is necessary to provide improved clarity to the purpose of the section, which is devoted exclusively to the recreational take of saltwater crustaceans.

2. In the originally proposed language, the term “operator” replaced the term “owner” in subsection 29.80(a)(3); however, the change was not illustrated in strikeout/underline format. As such, in three places, the word “owner” should have been shown as strikeout, and in three places, the word “operator” should have been underlined. The change conforms the language in subsection (a)(3) with the individual trap limit and gear identification language added in subsections (c)(3) and (c)(6). This change is necessary to consolidate the responsibilities of complying with the rules related to recreational crab traps to the individuals who operate them. The new trap limit would require enforcement officers to account for the number of traps attributed to each GO ID number as marked on each buoy. Marking the GO ID number of an operator along with an owner would very likely create confusion, so the Commission decided that only the GO ID numbers of the operators will be marked on the buoys for streamlining enforcement of comparing the GO ID on the written permission to the GO ID on the buoy being fished.
3. In the originally proposed language of subsection 29.80(b)(3), the word “below” was added after the strikeout of “in subsections (b)(3)(A) and (b)(3)(B)”; however, the change was not illustrated in underline format. This addition is necessary for improving the clarity the regulation.
4. In the originally proposed language, “or lobster report card” was inadvertently removed from existing regulatory language in subsection 29.80(b)(3). The text is added back as existing regulatory language.
5. In the originally proposed language, “Recreational take of” was added to the title of Section 29.85; however, the change was not illustrated in underline format. This addition is necessary for clarifying the purpose of the section.
6. Lastly, the economic analysis for the costs to Commercial Passenger Fishing Vessels (CPFVs) was updated in response to public comment. See sections VI. (a) and (c) of this Final Statement of Reasons, as well as the revised Economic and Fiscal Impact Statement (STD 399).

Baseline regulatory language in subsection 29.80(h) has been updated to reflect changes made in Office of Administrative Law (OAL) file 2021-0226-02E which went into effect March 8, 2021.

Additional non-substantive changes were made to correct a capitalization error in proposed subsection 29.80(c)(3)(B) and insert a missing word in proposed subsection 29.80(c)(7)(D)3.

Proposed subsection 29.80(c)(7) provides authority for the Director of the Department of Fish and Wildlife (Department) 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 (RAMP; Section 132.8, Title 14, CCR). At the time of publication of the notice, the RAMP regulations were not yet in effect, so the ISOR listed the notice number. The RAMP regulations (OAL file number 2020-0902-02S) became effective on November 1, 2020.

There have been no other changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

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

A summary and response to public comments received during the September 25-December 9, 2020 comment period is provided in **Attachment 1**. A total of 58 commenters provided 233 individual comments during this timeframe.

A summary and response to public comments received during the March 5 - 22, 2021 continuation notice period is provided in **Attachment 2**. Another 45 commenters added another 172 individual comments during this timeframe, many of whom had commented during the original comment period. However, pursuant to Government Code Section 11346.9(a)(3), comments were determined to be unrelated and outside the scope of the continuation notice if they were not specifically directed at those changes listed under Section III. (Update) above. Responses to those comments are thus noted as “the comment is outside the scope of the 15-Day notice.”

V. 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 a 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 federal Endangered Species Act 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) Consideration of Alternatives

In view of information currently possessed, no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

(d) 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 **prior to publication of the notice. Some commenters proposed that blanket validations be issued to CPFV operators as opposed to individual clients. However, this would not allow the Department to collect the personal information from the fishers directly to facilitate directed surveys. Furthermore, validation is already a common practice, with the Ocean Enhancement Validation being required for almost all fishing activities south of Point Arguello, Santa Barbara County. The cost of \$2.25 per annual validation is also lower than any other California recreational fishing validation or report card.**

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 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 for up to the maximum 60 traps per vessel, resulting in industry costs of **\$57,270** in initial costs and approximately **\$16,647** 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 **than those vessels that pursue only crab**. These impacts are not anticipated to be more than those due to the typical season variation due to weather and other unknown influences. **Refer to the revised STD 399 and Addendum for more information on the analysis of the economic impacts of the proposed regulations.**

- (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 **\$894.84 per vessel** in initial costs and approximately **\$260** in subsequent years to replace lost or damaged buoys. **Refer to the revised STD 399 and Addendum for more information on the analysis of the economic impacts of the proposed regulations**

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 **than those vessels that pursue only crab. Analysis of CPFV logs was done comparing the 2015-16 season, when the recreational crab fishery was delayed due to domoic acid public health concerns, with the following season of 2016-17 that opened as scheduled. In 2015-16, areas of the recreational fishery opened in stages between December 31 and May 26 as the domoic acid public health risk abated. The analysis shows that while the cumulative number of fisher trips (i.e., the number of trips sold to individual fishers) involving Dungeness crab during the 2015-16 season was only 75% of the number that occurred in 2016-17, the overall number of trips performed by the fleet in 2015-16 was 98% of those in 2016-17. This suggests that effort-shift did occur on the fleet level for this delayed fishing season.**

(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 **recovered** 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 **direct** savings to State agencies or costs/savings in federal funding to the State, **but the proposed measures may help the state and federal government to avoid future resource cost related to further entanglements.**

(e) Nondiscretionary Costs/Savings to Local Agencies

None.

(f) Programs Mandated on Local Agencies or School Districts

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code

None

(h) Effect on Housing Costs

None.

Updated Informative Digest/Policy Statement Overview

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 (**RAMP**; 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.

UPDATE

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regulations were not yet in effect, so the ISOR listed the notice number. The RAMP regulations (OAL file number 2020-0902-02S) became effective on November 1, 2020.

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