

NOTICE OF PROPOSED EMERGENCY REGULATIONS

Expand Retrieval of Lost or Abandoned Commercial Dungeness Crab Traps

August 19, 2024

NOTICE IS HEREBY GIVEN that the Department of Fish and Wildlife (Department) proposes to readopt an emergency action which amended Section (§)132.2, Title 14, California Code of Regulations (CCR) to improve and expand opportunities for retrieval of lost, damaged, abandoned, or otherwise derelict commercial Dungeness crab traps (hereafter “lost or abandoned traps”).

The Department’s proposed action would continue to allow permitted Dungeness crab vessels to retrieve an unlimited number of lost or abandoned traps as authorized by the Department Director pursuant to §132.8(f), Title 14, CCR and clarify activities under the amended subsection are notwithstanding the general prohibitions established by Fish and Game Code §9002.

Pursuant to the requirements of Government Code §11346.1, the Department is providing notice of proposed emergency action with regard to the above-entitled emergency regulation. The documents outlining the proposed emergency action can be found on the Department’s webpage at <https://wildlife.ca.gov/Notices/Regulations/gear-retrieval-expansion>.

Government Code §11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code §11349.6.

WRITTEN COMMENT PERIOD

Any interested person may present statements, arguments, or contentions, in writing, submitted via U.S. mail or e-mail, relevant to the proposed emergency regulatory action. Written comments submitted via U.S. mail or e-mail must be received at OAL within five days after the Department submits the emergency regulations to OAL for review.

Please reference comments as regarding “CDFW Emergency Regulations: Expand Retrieval of Lost or Abandoned Commercial Dungeness Crab Traps” addressed to both:

Reference Attorney
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
Email: staff@oal.ca.gov
Fax No.: 916-323-6826

Department of Fish and Wildlife
Attn: Chelle Temple-King
P.O. Box 944209, Sacramento, CA
94244-2090
Email: Regulations@wildlife.ca.gov

AND

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The Department anticipates it will submit the rulemaking to OAL on or after August 26, 2024. For the status of the Department's submittal to OAL for review, and the end of the five-day written submittal period, please consult OAL's website at <http://www.oal.ca.gov> under the heading "Emergency Regulations."

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

(Gov. Code, § 11346.5, subd. (a)(3))

Up to 4,000 commercial Dungeness crab traps are lost during each fishing season and pose a risk of entangling marine life, including endangered species such as humpback whales, blue whales, and leatherback sea turtles. In their current form, the two regulatory provisions allowing for retrieval of lost or abandoned commercial Dungeness crab traps (§§ 132.2 and 132.7, Title 14, CCR) do not provide sufficient opportunity for trap retrieval. The Department and the California Dungeness Crab Fishing Gear Working Group have identified a need to improve and expand retrieval of lost or abandoned traps to avoid entanglements of endangered species.

Between 2020 and July 2024, at least 12 humpback whales and one leatherback sea turtle have been entangled with California commercial Dungeness crab traps, with an additional 18 humpback whales reported as entangled in unidentified gear which could have originated from the California commercial Dungeness crab fishery. This is despite the Department's management under the Risk Assessment and Mitigation Program (RAMP; §132.8, Title 14, CCR), through which the Department has imposed season delays, early closures, depth constraints, and reductions in allowable traps to limit entanglements of endangered species. The high number of recent entanglements also hinders progress towards California's goal of zero entanglement mortality and could jeopardize future issuance of an Incidental Take Permit under the federal Endangered Species Act for the commercial Dungeness crab fishery, which would further reduce fishing opportunities for coastal communities.

Last year, all six of the entanglements with California commercial Dungeness crab traps were reported after the statewide closure of the fishery, precluding the Department from taking further actions other than encouraging trap retrieval. It is imperative that every effort be taken to quickly find and remove as many lost or abandoned traps as possible. Readoption of the emergency action would expand the period of time during which an unlimited number of lost or abandoned commercial Dungeness crab traps can be retrieved which would reduce the likelihood of post season entanglements. Without readoption, entanglements could follow a similar pattern to that observed in 2023. In addition, readoption would keep regulations consistent for the fleet until the Department could potentially make the regulations permanent in the Spring of 2025. The proposed readoption of the emergency regulations would preserve the amendments to:

- subsection 132.2(a)(2) which clarifies the relationship between activities authorized under this subsection and Fish and Game Code §9002. With limited exceptions Fish and Game Code §9002 makes it "unlawful to willfully or recklessly disturb, move, or damage any trap that belongs to another person," thereby establishing a general prohibition against retrieval of lost or abandoned traps.

- subsection 132.2(a)(2)(E) which expands the period of time during which an unlimited number of lost or abandoned commercial Dungeness crab traps can be retrieved.

Benefits of the Proposed Regulation

The Department anticipates this regulation will continue to provide positive impacts on endangered species which forage off California (including humpback whales, blue whales, and leatherback sea turtles), as well as the California commercial Dungeness crab fishery and coastal communities. Prompt and widespread removal of lost or abandoned commercial Dungeness crab traps after the close of the fishing season, particularly in areas which have been closed due to elevated entanglement risk, will reduce entanglement risk and prevent harm to endangered species. Fewer entanglements in lost or abandoned traps will also benefit the California commercial Dungeness crab fishery, which would otherwise be subject to strict restrictions during future fishing seasons. In addition, readoption of the emergency regulation would maintain consistency for the fleet and the Department until the standard rulemaking is completed in Spring 2025.

Consistency and Compatibility with Existing Regulations

The Legislature may delegate to Department such powers relating to the protection and propagation of fish and game as the Legislature sees fit. Department staff has searched the California Code of Regulations and has determined that other state regulations that apply to retrieval of lost or abandoned commercial Dungeness crab traps are not inconsistent nor incompatible with the proposed regulations. The Department therefore finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.