

State of California
California Department of Fish and Wildlife
Initial Statement of Reasons for Regulatory Action
Certificate of Compliance

Amend Section 132.2
Title 14, California Code of Regulations
Re: Expand Retrieval of Derelict Commercial Dungeness Crab Traps

I. Date of Initial Statement of Reasons: August 21, 2024

II. Dates and Locations of Scheduled Public Hearing

Date: November 12, 2024

Location: Teleconference and
Webinar

Meeting details will be made available on the Whale Safe Fisheries Page at least seven days in advance of the meeting:

wildlife.ca.gov/Conservation/Marine/Whale-Safe-Fisheries

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 and subsection references in this document are to Title 14 of the California Code of Regulations. “Fishing Zone” has the same meaning as in Section (§)132.8. Furthermore, unless otherwise specified, “Dungeness crab fishery” (as well as “Dungeness crab vessel,” Dungeness crab season,” etc.) refers to the California commercial Dungeness crab fishery.

Between 2020 and 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. The entanglements occurred despite the California Department of Fish and Wildlife (Department) actively managing the fishery under the Risk Assessment and Mitigation Program (RAMP; §132.8), through which the Department has imposed season delays, early closures, depth constraints, and reductions in allowable traps to limit entanglements of endangered humpback whales, blue whales, and leatherback sea turtles. 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 (ITP) under §10(a)(1)(B) of the federal Endangered Species Act for the commercial Dungeness crab fishery for the take of marine mammals, which would further reduce fishing opportunities for coastal communities.

In early 2024, the Department and the California Dungeness Crab Fishing Gear Working Group identified a need to expand retrieval of lost or abandoned commercial Dungeness crab traps to prevent entanglements of endangered large whales and sea turtles. On February 22, 2024, the Department proposed an emergency action amending §132.2 which:

- 1) allowed permitted Dungeness crab vessels to retrieve an unlimited number of lost, damaged, abandoned, or otherwise derelict traps (hereafter “derelict traps”) as authorized by the Department Director pursuant to subsection 132.8(f), and

- 2) clarified that activities under the amended subsection are notwithstanding the general prohibitions established by Fish and Game Code (FGC) Section (§) 9002.

The Department adopted the emergency regulations on March 8, 2024, submitted for re-adoption of the emergency regulations (OAL file # 2024-0826-02EE), and plans to undertake a second readoption in early December 2024. In parallel, the Department is undertaking this rulemaking to adopt the emergency action as a standard regulation (i.e., Certificate of Compliance).

CURRENT REGULATIONS

Several existing sections of FGC and the California Code of Regulations relate to retrieval of lost or abandoned commercial Dungeness crab traps.

FGC subsection 8276(d) requires all commercial Dungeness crab traps to be removed from the water by 11:59 p.m. on the last day of the season in that area. FGC §9002 prohibits any fisherman from disturbing a trap that does not belong to them unless that person is a trap fisherman and has written permission to do so from the owner of that trap. FGC §9002.5 required the Department to establish a formal permit program providing for retrieval of lost or abandoned commercial Dungeness crab trap gear after the close of the fishing season, and the Department adopted implementing regulations for the program (§132.7) in September 2019.

FGC §8276.5 establishes the Dungeness crab trap limit program, which applies stringent limitations on the total number of traps in the fishery by limiting the number of traps that may be fished by any given permitted vessel and requires each trap be marked with a uniquely identifiable buoy tag. FGC subsection 8276.5(d) provides the Department with authority to modify the trap limit program after “consultation with the Dungeness crab task force or its representatives and after the task force has had 60 days or more to review the proposed modifications and recommend any proposed changes.” The Department adopted implementing regulations for the trap limit program as §132.1 – §132.5. §132.1 prohibits a Dungeness crab permitted vessel from possessing any Dungeness crab traps without a buoy tag assigned to that vessel, and §132.2 identifies three exceptions to the prohibition in §132.1:

- 1) In subsection a, when setting gear pursuant to FGC §8280.7 or retrieving derelict commercial Dungeness crab traps;
- 2) In subsection b, when operating under a waiver issued by the Department’s License and Revenue Branch; and
- 3) In subsection c, when operating under a Lost or Abandoned Commercial Dungeness Crab Trap Gear Retrieval Permit issued pursuant to §132.7.

§132.3 – §132.5 specify other aspects of the trap limit program.

Under the current emergency regulations, subsection 132.2(a)(2) limits retrieval of derelict commercial Dungeness crab traps to no more than six traps per trip except for the following periods: July 16 – October 31 or as authorized by the Department Director when implementing management actions pursuant to §132.8. Retrieving vessels must immediately return any crabs found within retrieved traps to the ocean and transport retrieved traps to shore at the conclusion of the fishing trip. Retrieving vessel operators must immediately document the following details in the retrieving vessel’s log: date and time of the trap retrieval, number of retrieved Dungeness crab traps, location of the retrieval, and any tag information or buoy

markings present on the retrieved trap.

PROPOSED REGULATIONS

Amend Subsection 132.2(a)(2)(B)

Multiple non-substantive revisions are proposed to improve readability. The revisions also clarify that the requirement to immediately return crab present in retrieved traps to ocean waters applies to the operator of the retrieving vessel, not the vessel itself, as the vessel operator is the individual responsible for complying with the regulation.

Amend Subsection 132.2(a)(2)(C)

The proposed revisions restructure the items which must be documented on the retrieving vessel's log into a numbered list to improve clarity and facilitate compliance. The word "commercial" is added to the second item for consistency and to further clarify that the scope of the documentation requirement is with regard to retrieved commercial Dungeness crab traps. The third item is modified to specify that location should be reported with latitude and longitude coordinates in degrees decimal minutes (DDM) to provide clarity for retrieving vessel operators and ensure relevant information is captured.

The proposed regulations would add a new requirement that retrieving vessel operators document the reason the traps are derelict and subject to retrieval under this Section. This documentation is of particular importance when vessel operators are retrieving gear during the open commercial fishing season since any encountered traps could be actively fished gear. This additional documentation requirement is necessary to ensure Department Law Enforcement Division officers can review a written record when inspecting vessels conducting activities under this subsection. Additionally, when paired with the new reporting requirement in subsection (a)(2)(D), the Department will be able to evaluate how retrieving vessel operators determine gear is derelict.

Add Subsection 132.2(a)(2)(D)

The new subsection goes beyond the current documentation requirement specified in subsection (a)(2)(C) and establishes an enhanced reporting requirement. Retrieving vessel operators will be required to report the information documented on the vessel log to the Department. The reporting requirement is necessary so the Department can track the locations and amount of derelict gear, evaluate effectiveness of the amended regulations, generate information needed to inform future revisions, and identify potential violations. Preliminary pre-notice scoping with the California Dungeness Crab Fishing Gear Working Group did not raise any concerns with the timeframe or methods of the proposed reporting requirement.

The proposal requires monthly reporting. This is a reasonable interval so the Department can track retrieval activity throughout the year without being unduly burdensome on vessel operators. The requirement only applies if the vessel operator retrieved derelict traps during the prior month. Establishing the requirement as being on or before the first day of the month creates flexibility for vessel operators in deciding when to submit their reports. The reporting requirement is limited to information required to be documented on the retrieving vessel's log to simplify the regulation.

The proposed regulation identifies three options for submitting the reports: via email or text to LostGear@wildlife.ca.gov or through an electronic form provided by the Department.

Submission via email or text to a dedicated email address will be familiar to all vessel operators conducting retrieval operations, since it mirrors the current requirement in subsection 132.8(g). Preliminary pre-notice scoping with the California Dungeness Crab Fishing Gear Working Group indicated support for establishing a form-based method as well. An electronic form with specific response formats and automatic submission will facilitate operator compliance with the reporting requirement, improve report quality, and ensure the Department receives reports in a timely fashion. The form would be structured in alignment with the requirements of this subsection and would not require any information beyond that identified in subsection (a)(2)(C).

Amend Current Subsection 132.2(a)(2)(D)

The proposed regulation renumbers current subsection (a)(2)(D) as (a)(2)(E) due to the addition of the new subsection (a)(2)(D). The proposal also makes non-substantive revisions to improve clarity.

Amend Current Subsection 132.2(a)(2)(E)

The proposed regulation renumbers current subsection (a)(2)(E) as (a)(2)(F) to maintain consistent numbering throughout subsection (a)(2). The proposal restructures the current language to specify the two periods of time during which an unlimited number of derelict commercial Dungeness crab traps can be retrieved as subsections (a)(2)(F)(1) and (2) to improve readability of the regulation.

The proposal also specifies that vessel operators retrieving traps under subsection (a)(2)(F)(2), i.e. as authorized by the Department Director during a fishery closure or season delay pursuant to §132.8, may not possess more than six retrieved traps on board when transiting open Fishing Zones. The requirement is necessary because vessel operators could be participating in the commercial Dungeness crab fishery in an open Fishing Zone while conducting retrieval activities in a closed Fishing Zone. Without this limitation an operator could be subject to violation due to an overlimit on the number of permitted traps.

(b) Goals and Benefits of the Regulation

The goal of the proposed regulation is to expand opportunities for commercial Dungeness crab vessels to retrieve derelict traps which could otherwise entangle marine life, including endangered species such as humpback whales, blue whales, and leatherback sea turtles. Prompt and widespread removal of derelict traps, particularly in areas which have closed under §132.8 due to elevated entanglement risk, will prevent harm to endangered species. Entanglements also impact the commercial Dungeness crab fishery, which will be subject to lost fishing opportunity from additional restrictions during future fishing seasons. By expanding opportunities for commercial Dungeness crab vessels to retrieve derelict traps, the proposed regulations will benefit both endangered species and California's highly valuable commercial Dungeness crab fishery (Dungeness Crab Enhanced Status Report, 2023) and support the Department's application for an ITP under §10(a)(1)(B) of the federal Endangered Species Act for the take of marine mammals by the commercial Dungeness crab fishery.

The proposed regulation will complement other methods for retrieving derelict traps, including the Trap Gear Retrieval Program established pursuant to FGC §9002.5. Implementing regulations in §132.7 were effective as of September 2019, with retrieval operations beginning in 2020. Under the program, up to 14% of lost or abandoned traps have been recovered

annually; however, waning interest and low participation during the 2023 and 2024 retrieval season has reduced effectiveness of this program. The Department is in the early stages of scoping potential changes to §132.7 which are expected to enhance participation. In the interim, the proposed regulations will ensure a viable pathway for derelict gear retrieval.

(c) Authority and Reference Sections from FGC for Regulation

Authority: Sections 8276.5 and 9002.5, Fish and Game Code.

Reference: Sections 8276.5 and 9002.5, Fish and Game Code.

(d) Specific Technology or Equipment Required by Regulatory Change

The proposed regulations do not require any specific technology or equipment. Retrieving vessel operators who are subject to the new reporting requirement currently comply with a similar requirement under Subsection 132.8(g).

(e) Identification of Reports or Documents Supporting Regulation Change

- California Ocean Protection Council Strategic Plan, February 26, 2020: https://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20200226/OPC-2020-2025-Strategic-Plan-FINAL-20200228.pdf
- Dungeness Crab Task Force Meeting Summary, October 2022: https://opc.ca.gov/wp-content/uploads/2009/04/DCTF_MeetingSummary_20221025.pdf
- Dungeness Crab, *Metacarcinus magister*, Enhanced Status Report, August 2023: <https://marinespecies.wildlife.ca.gov/dungeness-crab/the-species/>
- Dungeness Crab Task Force Meeting Summary, October 2023: https://opc.ca.gov/wp-content/uploads/2023/12/DCTF_DRAFT_Meeting-Summary_Nov2-3_2023_508.pdf
- Working Group Management Recommendation, January 10, 2024: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=218636&inline>
- Draft Conservation plan for California's Commercial Dungeness Crab Fishery, January 31, 2024: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=219843&inline>

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

The Department has met with the California Dungeness Crab Fishing Gear Working Group on a couple different occasions to discuss regulatory options in preparation for this rulemaking. These meetings occurred on March 12, 2024, and June 12, 2024. The Department has also informed the Dungeness Crab Task Force (DCTF) that these regulatory changes were being considered at their July 25, 2024, public Executive Committee meeting. The Department also plans on sharing the regulatory language with the DCTF membership prior to the rulemaking going to notice.

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

No alternatives were identified by or brought to the attention of Department staff that would have the same desired regulatory effect.

(b) No Change Alternative

Without the proposed certificate of compliance action, the emergency action would lapse. In the absence of the proposed regulations, vessel operators would remain limited to retrieving six derelict traps per trip until July 16 even when the commercial Dungeness crab fishery was closed, limiting the ability of the Department to effectively address entanglement risk. During the past three fishing seasons (2021-22 through 2023-24), the Department has closed Fishing Zones 3-6 by April 15, well in advance of the June 30 end date specified in FGC §8276. During these early closures, removal of lost or abandoned gear is essential and having fewer constraints on gear removal is an important element of the Department's entanglement risk reduction strategy. Additionally, retrieving vessel operators would no longer have clarity as to whether their activities under this Section conflict with the general prohibitions in FGC §9002.

Furthermore, without the proposed changes, the Department would not receive information on where, when, and how much gear was retrieved under this Section. A full accounting of all derelict gear retrieval activities will be critical to ensure the Department can comply with the anticipated reporting requirements of an ITP issued pursuant to Subsection 10(a)(1)(B) of the federal Endangered Species Act for the take of marine mammals by the commercial Dungeness crab fishery.

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

The proposed regulation has no adverse impacts on small business.

V. Mitigation Measures Required by Regulatory Action

The proposed regulatory action will not negatively impact the environment; therefore, no mitigation measures are 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. Lost or abandoned fishing gear may negatively impact the ecology, esthetics, and navigability of the state's water. Effective removal of these objects is expected to benefit the economy of the state.

(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 proposed action is not anticipated to result in the elimination of jobs or existing businesses as it will expand the current gear retrieval program and increase the opportunities for voluntary gear retrieval. The health and welfare of California residents and worker safety will not be directly impacted. The State's environment should be positively impacted by the removal of gear that could be hazardous to marine life.

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

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

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

None. If the proposed action is effective at reducing the number of non-target species entanglements, the Department may free time from entanglement response efforts. There should be no impact of 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 §17500) of Division 4, Government Code

None.

(h) Effect on Housing Costs

None.

VII. Economic Impact Assessment

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

The proposed action is not anticipated to induce the creation or elimination of jobs within the state as it is an expansion of voluntary retrieval opportunities, and no new personnel is required.

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

The proposed action is not anticipated to result in the creation or elimination of existing businesses.

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

The proposed action is not anticipated to result in the expansion of existing businesses.

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

The proposed action is not anticipated to directly benefit the health and welfare of California residents.

(e) Benefits of the Regulation to Worker Safety

The proposed action is not anticipated to directly benefit worker safety.

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

The proposed action should benefit the State's environment by the removal of gear that could be hazardous to marine life.

(g) Other Benefits of the Regulation

The program is anticipated to benefit the commercial Dungeness crab fishery by returning lost or abandoned trap gear to fishermen at a cost lower than replacing the gear.

Informative Digest/Policy Statement Overview

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 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.

On February 22, 2024, the Department proposed an emergency action amending §132.2 which allowed permitted Dungeness crab vessels to retrieve an unlimited number of lost, damaged, abandoned, or otherwise derelict traps as authorized by the Department Director. The Department adopted the emergency regulations on March 8, 2024, submitted for re-adoption of the emergency regulations (OAL file # 2024-0826-02EE), and plans to undertake a second readoption in early December 2024. In parallel, the Department is undertaking this certificate of compliance action to adopt the emergency action as a standard regulation. In addition, the Department proposes the following changes to §132.2:

- Add a new requirement that retrieving vessel operators document why they believe traps are derelict and subject to retrieval.
- Establish an enhanced reporting requirement to track locations and amount of derelict gear for management and law enforcement purposes.
- Specify that vessel operators retrieving traps may not possess more than six retrieved traps on board when transiting open Fishing Zones.
- Specify that the Director can authorize the retrieval of an unlimited number of derelict traps during a fishery closure or season delay.

Goals and Benefits of the Regulation

The goal of the proposed regulation is to expand opportunities for commercial Dungeness crab vessels to retrieve derelict traps which could otherwise entangle marine life, including endangered species such as humpback whales, blue whales, and leatherback sea turtles. Prompt and widespread removal of derelict traps, particularly in areas which have closed under §132.8 due to elevated entanglement risk, will prevent harm to endangered species.

Entanglements also impact the commercial Dungeness crab fishery, which will be subject to lost fishing opportunity from additional restrictions during future fishing seasons. By expanding opportunities for commercial Dungeness crab vessels to retrieve derelict traps, the proposed regulations will benefit both endangered species and California's highly valuable commercial Dungeness crab fishery (Dungeness Crab Enhanced Status Report, 2023) and support the Department's application for an ITP under §10(a)(1)(B) of the federal Endangered Species Act for the take of marine mammals by the commercial Dungeness crab fishery.

The proposed regulation will complement other methods for retrieving derelict traps, including the Trap Gear Retrieval Program established pursuant to FGC §9002.5. Implementing regulations in §132.7 were effective as of September 2019, with retrieval operations beginning in 2020. Under the program, up to 14% of lost or abandoned traps have been recovered annually; however, waning interest and low participation during the 2023 and 2024 retrieval season has reduced effectiveness of this program. The Department is in the early stages of scoping potential changes to §132.7 which are expected to enhance participation. In the interim, the proposed regulations will ensure a viable pathway for derelict gear retrieval.

Consistency and Compatibility with Existing Regulations

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Legislature has delegated to the Department the power to adopt regulations governing aspects of the Dungeness crab fishery (FGC §8276.5 and §9002.5). No other state agency has the authority to adopt regulations governing Dungeness crab fishing gear. The Department has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Department has examined the CCR for other Dungeness crab regulations and has concluded that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

