



**TITLE 14. DEPARTMENT OF FISH AND WILDLIFE
NOTICE OF PROPOSED RULEMAKING ACTION**

Amend Section 132.2

Title 14, California Code of Regulations

Re: Expand Retrieval of Lost or Abandoned Commercial Dungeness Crab Traps

September 27, 2024

NOTICE IS HEREBY GIVEN that the Department of Fish and Wildlife (Department) proposes to amend 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 purpose of this proposed regulatory change is to continue existing regulations put in place by emergency action (OAL #2024-0301-01E and 2024-0826-02EE) by way of a certificate of compliance regular rulemaking.

The Department’s proposed action would 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, and specify that the Director can authorize the retrieval of an unlimited number of derelict traps during a fishery closure or season delay.

After consideration of all public comments, objections, and recommendations regarding the proposed action, the Department may adopt the proposed regulations.

PUBLIC HEARING

A virtual public hearing is scheduled as follows:

Date: Tuesday, November 12, 2024

Time: 10 a.m. to 12 p.m. (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)

Location: Teleconference and Webinar

At the public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that the persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments on the proposed action to the Department. All written comments must be received by the Department via mail, or e-mail, no later than **Tuesday, November 12, 2024**, to the contact as follows:

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

AUTHORITY AND REFERENCE:

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

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

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 regulation 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 the traps are derelict and subject to retrieval.
- Establish an enhanced reporting requirement to track the 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 Proposed Regulations

This proposed certificate of compliance action will continue expanded 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 Incidental Take Permit (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 certificate of compliance action will complement other methods for retrieving derelict traps, including the Trap Gear Retrieval Program established pursuant to Fish and Game Code (FGC) Section 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 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.

AUTHORITY AND REFERENCE:

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DOCUMENTS INCORPORATED BY REFERENCE:

NONE

DOCUMENTS RELIED UPON:

- 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>

DISCLOSURES REGARDING THE PROPOSED ACTION:

IMPACT OF THE REGULATORY ACTION/RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

- (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 Section 17500) of Division 4, Government Code: None

- (h) Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The proposed regulation may affect small business; see addendum to STD 399.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department concludes that the proposed regulation will not create additional job opportunities; result in the elimination of jobs or existing businesses, create new businesses, eliminate existing businesses, or expand businesses in the state.

- (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 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.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.”

AVAILABILITY OF RULEMAKING DOCUMENTS AND CONTACT PERSONS

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Department website at <https://wildlife.ca.gov/notices/regulations/>.

The proposed text (the “express terms”) of the regulations, as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review at 715 P Street, Sacramento, CA 95814 (17th floor). The rulemaking file will be available electronically upon request by contacting the Department at

Regulations@wildlife.ca.gov. Inquiries concerning the regulatory process or requests for documents should be directed to:

California Department of Fish and Wildlife, Regulations
Attn: Chelle Temple-King, Sr. Environmental Scientist
P.O. Box 944209
Sacramento, CA 94244-2090
916-902-9223
Email: Regulations@wildlife.ca.gov

Inquiries concerning the subject matter or substance of the proposed action should be directed to:

California Department of Fish and Wildlife, Marine Region
Attn: Ryan Bartling, Sr. Environmental Scientist Supervisor
3637 Westwind Blvd
Santa Rosa, CA 95403
Phone: (415) 761-1843
Email: Whalesafefisheries@wildlife.ca.gov

As of the date this notice is published, the rulemaking file consists of:

- STD Form 400: Notice of Proposed Action
- Initial Statement of Reasons
- Proposed Text of the Regulation: Amendment of Section 132.2, Title 14, CCR
- Economic and Fiscal Impact Assessment (Form STD 399) and addendum
- Documents or Reports supporting the proposed regulation change

AVAILABILITY OF DOCUMENTS ON THE INTERNET

<https://wildlife.ca.gov/Notices/Regulations/Gear-Retrieval-Expansion>

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received by the Department, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Chelle Temple-King (see above for further contact information). The Department would accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon completion, copies of the Final Statement of Reasons may be obtained by checking the website at the link provided above or contacting Chelle Temple-King (see above for further contact information).