

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

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

I. Dates of Statements of Reasons

(a) Initial Statement of Reasons                      Date: September 27, 2024

(b) Final Statement of Reasons                      Date: January 27, 2025

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing                                      Date: November 12, 2024

Location: Virtual

### III. Update

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

#### Consistency and Compatibility with Existing Regulations:

The Legislature may delegate to the Department such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature delegated regulation of the take of Dungeness crab for commercial purposes to the Department. The Department conducted an evaluation of existing state and federal regulations, and this regulation is neither inconsistent nor incompatible with existing state and federal regulations.

Document: "Dungeness Crab, *Metacarcinus magister*, Enhanced Status Report, August 2023" is not included in the rulemaking file, as the Department is not relying upon this document.

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

There were 14 written comments received through the public comment period, and 3 verbal comments received during the public hearing. See appendix: Responses to Comments

### V. Description of Reasonable Alternatives to Regulatory Action

#### (a) Alternatives to Regulation Change

No alternatives were considered.

#### (b) No Change Alternative

Without the proposed changes, 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 California Department of Fish and Wildlife (Department) has closed Fishing Zones 3-6 by April 15, well in advance of the June 30 end date specified in Fish and Game Code (FGC) Section 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 Section 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.

#### (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

The proposed regulation has no adverse impacts on small business.

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. 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.

## Updated 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 [Sections 132.2 and §132.7, Title 14, California Code of Regulations (CCR)] do not provide sufficient opportunity for trap retrieval. The California Department of Fish and Wildlife (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 15 humpback whales and one leatherback sea turtle have been entangled with California commercial Dungeness crab traps, with an additional 31 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; Section 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 Section 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, re-adopted the emergency regulations on September 5<sup>th</sup>, 2024, and undertook a second readoption on December 5<sup>th</sup>, 2024. In parallel, the Department is undertaking this rulemaking to adopt the emergency action as a standard regulation. The Department proposes the following changes to Section 132.2:

- Add a new requirement that retrieving vessel operators document the reasons 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.

The proposed regulation will complement other methods for retrieving derelict traps, including the Trap Gear Retrieval Program established pursuant to FGC Section 9002.5. Implementing regulations in Section 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 seasons have reduced effectiveness of this program. The Department is in the early stages of scoping potential changes to Section 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 sections 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.

### **Update**

The Department held a public hearing on November 12, 2024, the close of the comment period. There were 14 written comments received and 3 verbal comments received during the public hearing. There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action. The Department adopted the regulations on February 14, 2025.

The Department finds that it is necessary for the health, safety, or welfare of the people of the state that the regulations requiring a report to be made apply to business.