

petition requesting the establishment of a Commercial Passenger Fishing Vessel (CPFV) validation.

Background

Hoop net use in the recreational Dungeness crab fishery has increased. The Department's Marine Law Enforcement Division has observed more hoop nets during their on-the-water patrols and a recent Department survey also documented an increased preference for hoop nets over crab traps.

A recreational entanglement evaluation for crab traps was first implemented during the start of the 2021-22 Dungeness crab season and modeled after the commercial fishery's Risk Assessment Mitigation Program, or RAMP (Section 132.8). The intent of these programs is to reduce entanglement risk of whales and sea turtles protected and listed under the federal Endangered Species Act (ESA) with fishing gear. Entanglement risk evaluations in both fisheries are conducted regularly during the Dungeness crab season. The Dungeness crab Fishing Gear Working Group (Working Group) is comprised of recreational and commercial fishery participants as well as representatives from non-profit environmental organizations who provide recommendations on management actions for consideration by the Department's Director during each risk assessment. The available tools to assess and respond to risk for the recreational entanglement evaluation are limited compared with the commercial program. In recent seasons, some Working Group members raised concerns about the inability to restrict the recreational fishery in the same area where the commercial fishery was delayed due to a high number of entanglements. Under RAMP, the commercial crab fishery is not only subject to season delays or early closures, but also may be restricted by a trap gear reduction or a depth constraint. These proposed regulations to the recreational entanglement evaluation, which are intended to better align the two sectors of this fishery, include the addition of a trigger for confirmed entanglements, and depth constraint as a management action.

New line marking requirements adopted for other commercial fixed gear fisheries (e.g., U.S. West Coast Dungeness crab fisheries) address identification of fishing gear observed in confirmed entanglements. Manufacturers are already making these uniquely marked lines available in the marketplace. A line marking prohibition for hoop nets and crab traps would prevent these new manufactured lines from being used on California recreational crab gear (in order for them to be distinguished from commercial), and should not change methods to how gear is currently rigged.

CPFVs take customers on fishing trips and provide fishing gear, either with hoop nets or crab traps. A CPFV-specific validation would be required from CPFV owners when their fishing operations utilize crab traps so that CPFV customers would no longer be required to purchase the individual trap validation. In addition, CPFV fishing logbooks will include new data fields of number of crab traps and hoop nets fished to provide CPFV gear effort during each fishing trip to the Department, data which are currently lacking and are not readily supplied by CPFV customers. This change would increase the quality and quantity of data to inform fishery management and entanglement risk.

Current Regulations

Current regulations for the recreational Dungeness crab fishery specify seasons, size limits, bag and possession limits, closed fishing areas, and gear restrictions. A recreational fishing license is required to participate in recreational crab fishing, except from a public pier or jetty. All individuals who use a crab trap are required to have a crab trap validation. Recreational crab traps (including crab loop traps) may be used north of Point Arguello, Santa Barbara County, to take all species of crabs (subsection 29.80(e)). Individuals are not allowed to operate a trap owned by another person unless they have in possession written permission from the operator of the trap that matches the GO ID number located on the main buoy, and this permission can be transmitted electronically (subsection 29.80(a)(3)). Traps are required to have a main buoy and a smaller red marker buoy attached no farther than 3 feet away from the main buoy. Regulations prescribe a minimum size for the main buoy, and a specific size for the marker buoy (subsection 29.80(c)(3)). Traps have a service interval not to exceed nine days (subsection 29.80(c)(5)). An individual may service up to ten of their traps with the ability to service up to ten additional traps with permission from the operator (subsection 29.80(c)(6)). The main buoy of crab traps must be marked with either the operator's GO ID or a CPFV's commercial boat registration number (subsection 29.80(c)(3)(A)).

Crabs can also be taken recreationally by hand, crab loop trap (snare), or hoop net. Hoop nets may be used year-round and have a service interval of two hours (subsection 29.80(b)(2)). They are considered abandoned if left out longer than two hours (subsection 29.80(b)(3)). Current regulations do not limit the number, size or color of buoys used on hoop net gear. Hoop nets (not used from shore) must have a surface buoy that is marked to indicate specific operator either by an individual's GO ID, CPFV's vessel commercial boat registration number, or guide license's identification number (subsection 29.80(b)(5)). There is no limit on the number of hoop nets that may be operated by an individual or CPFV when used north of Point Arguello, Santa Barbara County (subsection 29.80(b)(4)(B)).

A CPFV is allowed to operate up to 60 traps (Subsection 29.85(a)(4)). Customers are required to have a recreational fishing license and a crab trap validation when crab traps are used onboard CPFVs. The owner and operator of a CPFV is required to keep and submit a complete and accurate record of fishing activities on a logbook (subsections 190(a) and 190(b)).

Recreational crab traps are evaluated for marine life entanglement risk during the Dungeness crab season under a marine life concentration trigger (subsection 29.80(c)(7)(A)). Under the recreational evaluation when marine life concentration triggers are met, the Director may declare a management action by RAMP Fishing Zone (subsection 29.80(c)(7)(C)). The only management actions the Director can implement are a fleet advisory to employ voluntary practices or a trap prohibition at the start or end of the recreational Dungeness crab season (subsection 29.80(c)(7)(B)). This recreational entanglement evaluation regulatory framework also references definitions and management triggers described in the RAMP regulation (Section 132.8) for the commercial Dungeness crab fishery.

Proposed Regulations

Proposed regulations primarily update recreational crab gear of hoop nets used north of Point Arguello, Santa Barbara County, and crab traps, as well as update the crab validation.

- **Add a hoop net tampering prohibition:** The proposed regulation would prevent unlawful tampering of hoop nets. (Proposed subsection 29.80(a)(3)(B)).
- **Prohibit the use of other West Coast fisheries' unique line marks/colors on hoop net and crab trap gear:** The proposed regulation would prohibit recreational gear for take of crustaceans from using another fishery's unique line marking. (Proposed subsection 29.80(a)(4)).
- **Clarify surface gear requirements for northern hoop nets:** The proposed regulation would standardize surface gear configurations of hoop nets used north of Point Arguello, Santa Barbara County. An optional marker buoy will be allowed that is orange in color and marked on two opposing sides with the unique letter "H." The surface line length will be set at a maximum of 12 feet, and unique line marking is required when the line exceeds 6 feet. (Proposed subsection 29.80(b)(5)).
- **Update the marine life entanglement evaluation process:** The proposed regulation would add a trigger for confirmed entanglements of any protected species referenced in RAMP as well as a depth constraint under the available management actions (Proposed subsections 29.80(c)(7)(A), 29.80(c)(7)(B), and 29.80(c)(7)(D)).
- **Add a separate CPFV crab trap validation:** The proposed regulation would modify the current trap validation, creating a separate CPFV validation. In addition, new fields will be added to the CPFV logbook and a new fee for the CPFV validation. (Proposed subsections 29.85(a), 195(a), 195(b), 701(i), and 701(j)).

The proposed regulatory package also includes clarifying and non-substantive edits to sections 29.80 and 195.

Amend Subsection 29.80(a)(3)

The tampering prohibition applies to crab traps under this subsection and is being amended to include hoop nets. A service interval for hoop nets requires that they be raised and inspected every two hours and pulled at the conclusion of a fishing trip. Since any gear left unattended in the open ocean has a higher likelihood of interactions by other users, a regulatory prohibition is proposed to further discourage and make unlawful tampering of hoop nets based on the marking requirements of the operator on the main surface buoy.

The amendment to this subsection will add hoop nets under a new subsection title of: "Tampering Prohibition." Separate subsections will be added for crab traps (A) and hoop nets (B). The crab trap subsection retains the same language. The proposed hoop net subsection will make it unlawful to disturb, move or damage any hoop net that belongs to another person while exempting hoop nets operated by a licensed guide who supplies hoop nets to clients on guided trips (subsection 29.80(b)(5)(B)). When on a vessel, hoop nets may be used by others, provided that the owner or operator of the hoop net is also present on the vessel. Required marking of the GO ID number is necessary to identify operators to further support enforcement of this provision. Additional clarification is necessary to make clear that hoop net limits described in subsection 29.80(b)(4) still apply under this provision.

Add Subsection 29.80(a)(4)

The addition of this new subsection would make it unlawful to mark or use colored lines required by other fisheries operating in the U.S. West Coast Exclusive Economic Zone (state or federal fisheries) from being used in recreational gear used to take crustaceans. This prohibition is necessary to prevent misuse by other fisheries of uniquely marked line to ensure positive identification of unique marks correspond to correct fishery type in confirmed entanglements.

Amend Subsection 29.80(b)(5)

The amendment to this subsection only applies to hoop nets used north of Point Arguello, Santa Barbara County, to implement a standard surface gear configuration that uniquely identifies hoop nets. This change will also differentiate hoop net surface gear from what is allowed on crab traps, aiding enforcement and entanglement identification. The amendment will specify that a main buoy is required to be no more than 6 inches in diameter and no more than 14 inches in length. An optional marker buoy may be used and must be ~~yellow~~ orange in color, no more than 6 inches in diameter and no more than 14 inches in length, and must be attached to the main buoy no more than ~~three~~ twelve (12) feet away. The marker buoy is also required to have a unique identification letter ("H") that is marked on two opposing sides of the buoy with dimensions at least two inches in height and drawn with a line no less than 0.25 inch thick. In addition, line marking is required if the surface line between the main buoy and the marker buoy exceeds 6 feet. A solid orange mark adjacent to the marker buoy must be between 24 to 26 inches in length and adjacent to a solid purple mark that is between 24 to 26 inches in length (Figure 1).

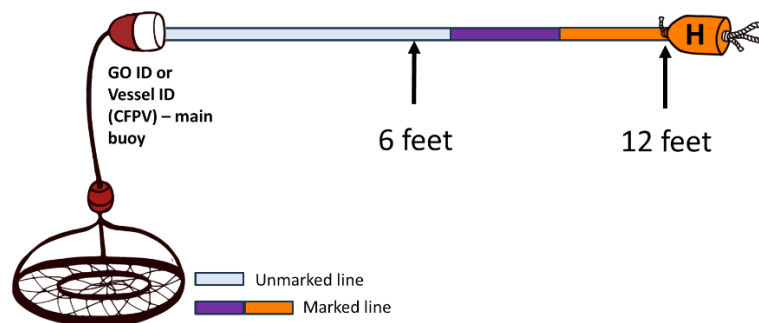


Figure 1. Diagram of hoop net surface line marking, if more than 6 feet of line is used between the main and marker buoys. A 24 to 26-inch solid orange color mark adjacent to one 24 to 26-inch solid purple mark shall be marked at the terminal end of the line adjacent to the marker buoy with no unmarked line between the two colors.

This marker buoy is optional due to the various modes and depths that hoop nets may be deployed. ~~Limiting the amount of surface line is necessary to minimize entanglement risk, especially when the gear is used during elevated levels of marine life entanglement risk.~~ Specifying the maximum length and maximum diameter size of the main and marker buoys is necessary to allow for a range of buoy sizes to accommodate smaller buoys as well as a standard-sized buoy that is commonly sold with fishing gear. One can still use a minimum sized crab trap main buoy with their hoop net; however, they would no longer be allowed to have the attached red marker buoy since the hoop net marker buoy, if used, must be ~~yellow~~

orange and marked twice with the letter “H” to aid in entanglement identification.

When the surface line exceeds 6 feet, additional marking requirements are needed on the line itself. Longer lengths of line at the surface have a higher likelihood of wrapping an animal, and although hoop net gear has not been implicated in entanglements, the majority of entanglements cases on the West Coast are categorized under unidentified gear. During an entanglement with fishing gear, surface gear has been identified as the most visible portion (D. Lawson, pers. comm., 2022) and unique marking on the buoys and the line for hoop nets will serve to positively identify hoop net gear. However, it can also eliminate hoop net gear in unidentified gear cases where secondary buoys and surface lines are observed without the required unique identification of the hoop net. For instance, the additional red marker buoy required on recreational crab trap surface gear has not been observed in entanglement cases to date.

The two colors chosen for hoop net line marking align with the West Coast line marking initiatives that designates a unique color for each state: California, Oregon and Washington, and a unique color for each fishery/gear type. Purple is the state designated color for California while the color orange was selected because it is not used by other West Coast states and it is a color found in a variety of materials that can be used to mark lines such as paint or tape. Orange is also a commercially available buoy color, and if one is not going to paint buoys, to keep the marker buoy color consistent with the fishery/gear type color of the line marks.

Table 1 shows a summary of the surface gear requirements between crab traps and the proposed hoop net changes. The additional marker buoy and maximum allowance of 12 feet of line will facilitate removal within the required service interval period and compensate for the effects of surface gear getting pulled underwater by strong ocean tidal currents.

Table 1. Summary of surface gear allowances north of Point Arguello (Santa Barbara County) by recreational gear type (take of crustaceans).

Gear: Location	Main Buoy Dimension	Marker Buoy Color/Dimensions	Length of Line Between Buoys	Line Marking
Crab Traps: North of Point Arguello (where they are only allowed)	Minimum size: 5 inches diameter and 11 inches in length	Must have a red marker buoy that is at least 3 inches by 5 inches	Maximum distance from the main buoy is 3 feet	<u>None</u>
Hoop Nets: North of Point Arguello*	Maximum size: 6 inches in diameter and 14 inches in length	Optional: If using an additional marker buoy, it must be yellow <u>orange</u> ; maximum size 6 inches in diameter and 14 inches in length; <u>and marked with the letter “H” on two opposing sides</u>	Maximum distance from the main buoy is 3 <u>12</u> feet	<u>If using more than 6 feet of line, then 24 to 26-inch solid orange mark adjacent to a 24 to 26-inch solid purple mark shall mark the terminal end of line (at marker buoy)</u>

**Hoop net surface gear proposed in this rulemaking.*

Amend Subsections 29.80(b)(5)(A), (B), (C)

The word “main” is added to subsequent subsections 29.80(b)(5)(A), (B), and (C). This change is necessary to clarify for the operator that the primary or main buoy is where the marking for commercial boat registration number (A), guide license (B), or the GO ID (C), rather than the proposed optional marker buoy.

Amend Subsection 29.80(c)(7)

Amendments to paragraph (A) of this subsection update references to recently updated commercial RAMP regulations (Section 132.8, OAL Notice #Z-2024-1126-04 and Z2024-032603) and adds confirmed entanglements as an additional entanglement risk trigger. Both RAMP and the recreational entanglement evaluation are intended to minimize entanglement interactions with the following ESA protected species: humpback whales, blue whales and Pacific leatherback sea turtles. Marine life concentration and confirmed entanglement triggers will now both be used to evaluate recreational crab trap gear entanglement risk similar to the RAMP program. The California recreational crab trap fishery has been identified as the source fishery in three humpback whale entanglements occurring in 2015, 2017, and 2019 (Saez et al. 2021 and NOAA Fisheries 2020). Recreational crab trap gear has not been attributed to an entanglement of blue whales nor leatherback sea turtles.

Subsection (A)(1) is expanded to include under subsection a. marine life concentration numerical triggers and under subsection b. confirmed entanglement numerical triggers with references to pertinent RAMP regulations. The time periods for marine life concentration triggers “in the fall” or “in the spring” are removed for clarity as the RAMP references already identify the duration of time when triggers are applicable. The inclusion of a confirmed entanglement trigger allows the recreational entanglement evaluation to be responsive to any increased entanglement reports of protected species.

Subsection (c)(7)(B)

The management actions of season delay, and closure are updated in subsection (c)(7)(B)2. to include references to the RAMP regulations that refer to the confirmed entanglement triggers (subsection 132.8(c)(1)) as noted above for (c)(7)(A).

A depth constraint is added as an additional management action under subsection (B)(4.). This change is necessary to better align available management actions between the recreational evaluation and RAMP. The regulation will explicitly apply to the use of crab traps within a depth contour defined under Title 50, Code of Federal Regulations Part 660, Section 660.71 (Revised March 1, 2023), 660.72 (Revised December 1, 2023), and 660.73 (Revised December 1, 2023) and incorporated by reference. The Federal regulatory references are available from <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=221972&inline>.

Subsection (c)(7)(C)

This subsection is updated to reference the correct definition of fishing zones under subsections 132.8(a)(6)(A)-(E) of the RAMP regulations. This change is necessary to ensure the correct cross-reference.

Subsection (c)(7)(D)

Notice via Director declaration will be updated to include “or other management action” in addition to the delay or closure already in regulation. The new subsection 29.80(c)(7)(B)4. of the depth constraint will also be referenced. The details of a depth constraint as a result of these regulations would be specified in any Director declaration (e.g., a depth constraint limiting crab traps to shallower than 30 fathoms). This change is necessary to align with the proposed management actions and stated in the Director’s declaration. Subsection (c)(7)(G) A clarification is added to ensure the reference means the subject section, 29.80(c)(7)(B).

Amend Section 29.85(a)

Crab trap validations were initially adopted by the Commission in 2021 to identify participants that use crab traps in order to provide public outreach and collect essential fishery information.

This subsection is amended with a new title: “Crab Trap Validations” and separate subsections for requirement of purchasing: (1) a Recreational Crab Trap Validation and (2) a new proposed CPFV validation. The addition will allow CPFV owners to purchase a validation that designates their fishing operation as using crab traps. CPFV customers will no longer need the Recreational Crab Trap Validation, but this will still be required when fishing with crab traps from other modes (e.g., private vessel, shore, or kayak). This change is necessary to respond to constituent concerns shared by petition #2022-11 submitted to the Commission.

Amend Section 195

Subsection (a)

The subsection describes CPFV logbooks and is amended to remove forms DFW 195A and 195B, incorporated by reference. In 2016, the Commission completed a rulemaking (Office of Administrative Law’s File ID # 2016-0523-04S) that transitioned the CPFV logbooks from paper logs to electronic form, available for completion at the Department website <https://apps.wildlife.ca.gov/marinelogs/cpfv>, while also maintaining a paper version of the same form.

The proposed amendments add instructions as to when a CPFV owner/operator needs to complete a log for daily fishing trip under subsections (1) and (2). This language is necessary to make clear to CPFV operators and staff to complete the logs on a daily basis.

Subsection (b)

A new subsection is inserted to list in the body of the regulation itself all current data fields in use by the forms that are removed from incorporation by reference. The Department also maintains a hard copy of the form with the same form fields. The 2016 rulemaking that last updated these forms moved the forms from Appendix A of Title 14, and updated the instructions. A prior rulemaking in 2013 replaced the forms, including the data fields of a prior skipper’s log, for compatibility with CPFVs (Office of Administrative Law’s File ID # 2013-0829-02S). Subsection (b) of this rulemaking lists those data fields still in use from the 2013 rulemaking, and adds further instructions describing further some fields of the CPFV logbook forms. New fields are also being included that request number of traps and number of hoop nets only when crab fishing north of Point Arguello, Santa Barbara County. By adding these fields, the Department will be able to estimate crab gear fishery effort of the CPFV sector during the Dungeness crab season to inform fishery management, data that is currently

lacking. Subsequent subsections will be renumbered. Fields (b)(1) through (b)(27) are existing fields introduced with the 2013 rulemaking. Below are the data fields by subsection number with the necessity and justification as presented by the 2013 ISOR (Commission, 2013).

Table 4 2. Existing Data Fields from forms 195A and 195B as presented by Commission (2013), and proposed fields listed in Section 195.

Field name	Necessity and Justification
<u>(1) Log Date</u>	This information gives the date of fishing activity and is used by law enforcement officers to determine compliance with regulations concerning species fished and seasonal restrictions. It is used by Department scientists to evaluate when fish species are caught, and used in producing estimates of catch and effort for fisheries management.
<u>(2) Vessel name</u>	This information is used to confirm the Vessel ID Number. It is important the Vessel ID Number is correct for enforcement purposes and for accurate catch and effort statistics that are mandated by law and used in fisheries management.
<u>(3) Vessel ID Number</u>	This information is used to confirm current status of the commercial passenger fishing vessel license (issued under Fish and Game Code § 7920) and commercial boat registration (issued under Fish and Game Code § 7881). It is important to know the number of unique vessels participating in the fishery and the extent of their participation for accurate catch and effort statistics that are mandated by law and used in fisheries management.
<u>(4) Port of landing</u>	This information is used to confirm the port code. It is important the port code is correct for enforcement purposes and for accurate catch and effort statistics that are mandated by law and used in fisheries management.
<u>(5) Port code</u>	This information is used to determine the port where the vessel lands. It allows scientists to evaluate species caught, their distribution, and together with other data allows evaluation of fishing effort. Area specific information is important in understanding the fisheries, crafting regulations and evaluating the impacts of regulations.
<u>(6) Operator's name</u>	This information is used by law enforcement officers to verify the activity record was submitted by the operator of the vessel. It also protects the owner and operator of the vessel by documenting that this is a true record of the vessel's activity.
<u>(7) Operator's signature</u>	This information is used by law enforcement officers to verify the activity record was submitted by the operator of the vessel. It also protects the owner and operator of the vessel by documenting that this is a true record of the vessel's activity.
<u>(8) No fishing activity for the month of</u>	This information is used by Department scientists to provide accurate estimates of recreational catch and effort for fisheries management, and assists in determining compliance in submitting logs.
<u>(9) Trip type</u> <u>(19) Departure time</u> <u>(20) Return time</u>	This information allows law enforcement officers to determine time spent at sea and the compliance with daily bag and possession limits for fish species. This information is used by Department scientists to determine effort of fishing activity for use in fisheries management.
<u>(10) Target species</u>	This information is used by Department scientists to determine what species are pursued and along with catch information, allows an informal evaluation of success. These data are also used in producing catch and

Field name	Necessity and Justification
	effort estimates for fisheries management.
<u>(11) Fishing method</u>	This information is used by Department scientists to evaluate the impacts of different fishing practices, and may be used in developing management measures. In addition, mortality rates of released fish vary by fishing method for some species (e.g., salmon) and this information is used in producing fishing mortality estimates for those species.
<u>(12) Bait</u>	This information is used by Department scientists to evaluate the impacts of different fishing practices, for fisheries management.
<u>(13) Species</u> <u>(14) Number kept</u> <u>(15) Number thrown back</u> <u>(16) Lost to sea lions</u>	This information is used by Department scientists to determine species fish caught, discarded and lost to sea lions. Species listed are generally those that are frequently caught, are actively managed by State and federal fisheries agencies or are of biological importance. Discard and loss to sea lion data allows for estimates of incidental mortality. Catch data is used by law enforcement officers to determine compliance with daily bag, possession and boat limits (CCR Title 14 §1.17, §1.59, §195(a)(1), §195 (e)).
<u>(17) Descending device</u>	Releasing fish with descending device reduces fishing related mortality. This information is used by Department scientists to evaluate the impact of different fishing practices and provide data necessary for the development of management measures and for the production of more accurate estimates of fishing mortality.
<u>(18) Bird interaction</u>	This information is used by Department scientists to evaluate the impacts of fishing practices with wildlife.
<u>(21) Hours and minutes fished</u>	This information allows Department scientists to evaluate fishing effort and catch rates for use in fisheries management.
<u>(22) Block where most fish caught</u>	This information allows Department scientists to evaluate the species distribution. Along with catch and effort information, it is used to determine the extent of various fisheries as mandated by law. This information is also used in producing estimates for fisheries management and determining impact of area restrictions.
<u>(23) Depth (feet)</u> <u>(24) Sea surface temperature (°F)</u>	This information is used by Department scientists to determine depth where species are being caught and the environmental factors, specifically water temperature that may be influencing fish species distribution. For fisheries management purposes, these data may also aid in determining mortality rates for released fish and determining the impacts of depth restrictions.
<u>(25) Number of fishers; the number of fishers who will fish, shall be recorded prior to departure of any trip</u>	This information is used by law enforcement officers to determine compliance with individual bag limits and boat limits, and by Department scientists in producing estimates of catch rates, effort and total catch for fisheries management.
<u>(26) Number of crew who fished</u> <u>(27) Number of fish caught by crew</u>	See above.
<u>(28) Number of crab traps (only when crab fishing north of Point Arguello, Santa Barbara</u>	*Proposed field: This field is necessary to provide CPFV gear effort during each fishing trip to the Department, data which are currently lacking and are not readily supplied by CPFV customers. This change would increase the quality and quantity of data to inform fishery management and

Field name	Necessity and Justification
<u>County)*</u>	entanglement risk.
<u>(29) Number of hoop nets (only when crab fishing north of Point Arguello, Santa Barbara County)*</u>	*Proposed field: see above.

Subsection (c)

This subsection is being renumbered with no changes to text.

Subsection (d)

This subsection is being renumbered and clarifies that CPFV records also need to be complete as well as accurate. A new statement is added to reference that the data fields in subsection (b) need to be in compliance with the newly renumbered subsection (c).

Subsections (e)-(h)

These subsections are renumbered with no changes to text except that subsection (f) includes a non-substantive edit to update a referenced subsection.

Amend Subsection 701(i)

This subsection will be added to include the new fee assessed for the CPFV Crab Trap Validation to cover its administrative cost. The fee is proposed to be \$17.75, see STD 399 for the fee determination calculation. This fee amount is subject to annual adjustments pursuant to Section 713. The next subsection (i) will be renumbered to (j).

(b) Goals and Benefits of the Regulation

Pursuant to FGC Section 7050, it is the state’s policy, among others, to “[c]onserve the health and diversity of marine ecosystems and marine living resources” and to “[a]llow and encourage only those activities and uses of marine living resources that are sustainable.” The proposed regulations would clarify and improve enforceability of current regulations for hoop nets. Regulations support a petition request that also improves data collection efforts to inform fishery management. The proposal better aligns management of the recreational sector with the commercial fishery in mitigating entanglement risk of marine animals protected by the federal Endangered Species Act and Marine Mammal Protection Act. Lastly, the proposal parallels U.S. West Coast fishery efforts to uniquely mark gear by ensuring these marks are prohibited in California recreational crustacean gear.

(c) Authority and Reference Sections from Fish and Game Code for Regulation

Section 29.80

Authority: Sections 200, 205, 7075 and 7078, Fish and Game Code.

Reference: Sections 200, 205, 265, 270, 275, 713, 1050, 1053.1, 1055.1, 7050, 7055, 7056, 7058, 7060, 7120, 7149.8, 7850, 7923, 7924, 8022, 8026 and 8587.1, Fish and Game Code.

Section 29.85

Authority: Sections 200, 205, 265 and 275, Fish and Game Code.

Reference: Sections 200, 205, 265 and 275, Fish and Game Code. Section 195 Authority: Sections 7071, 7920, 7923, 7924, 8026 and 8587.1, Fish and Game Code. Reference: Sections 7055, 7056, 7058, 7060, 7120, 7850, 7923, 7924, 8026 and 8587.1, Fish and Game Code.

Section 701

Authority: Sections 200, 205, 265, 275, 713, 1050, 1053.1 and 7149.8, Fish and Game Code.

Reference: Sections 200, 205, 265, 275, 713, 1050, 1053.1, 1055.1 and 7149.8, Fish and Game Code.

(d) Specific Technology or Equipment Required by Regulatory Change

Under subsection 29.80(b), a main buoy would have a maximum defined size of 6 inches in diameter and 14 inches in length while an optional marker buoy, if utilized, would need to be yellow in color also with a maximum defined size of 6 inches in diameter and 14 inches in length and attached to the main buoy no more than 3 feet away.

(e) Identification of Reports or Documents Supporting Regulation Change

- California Department of Fish and Wildlife. 2020. State of California, Department of Fish and Wildlife, Amended Initial Statement of Reasons for Regulatory Action (Pre-publication of Notice Statement). Add Section 132.8, Title 14, California Code of Regulations Re: Risk Assessment Mitigation Program: Commercial Dungeness Crab Fishery. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=180697>
- California Department of Fish and Wildlife. 2023. Dungeness Crab, *Metacarcinus magister*, Enhanced Status Report. Available from <https://marinespecies.wildlife.ca.gov/dungenesscrab/>
- California Department of Fish and Wildlife. 2024. Initial Statement of Reasons for Regulatory Action to Amend Section 132.8, Title 14, California Code of Regulations, Risk Assessment Mitigation Program: 2024 Program Revisions for the Commercial Dungeness Crab Fishery. Available from <https://wildlife.ca.gov/Notices/Regulations/RAMP2024>
- California Fish and Game Commission. 2013. State of California, Fish and Game Commission, Initial Statement of Reasons for Regulatory Action. Amend Sections 190 and 195, Title 14, California Code of Regulations Re: Fishing Activity Records, and Report of Fish Taken To Be Made by Owner of Barge or Vessel for Hire and Boat Limits.
- California Fish and Game Commission. 2020. State of California, Fish and Game Commission, Initial 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. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=183155&inline>

- California Fish and Game Commission. June 2023. Regulation Change Petitions (Marine) – Petitions 2022-11 and 2022-17 and Department Memo. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213197&inline>
- NOAA Fisheries. 2020. 2019 West Coast Whale Entanglement Summary. Available from https://www.fisheries.noaa.gov/s3//dam-migration/wcrnmfs_2019_entanglement_report_final-508_5-11-2020_rev.pdf
- Saez L, Lawson D, DeAngelis M. 2021. Large whale entanglements off the U.S. West Coast, from 1982-2017. National Oceanic and Atmospheric Administration Technical Memorandum NMFS-OPR-63A. 50 p. <https://www.fisheries.noaa.gov/s3//2021-03/tm-opr63a-final-031921.pdf?VersionId=null>

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

- July 18, 2024: Commission Marine Resources Committee meeting - Santa Rosa.
- September 20, 2024: Public webinar to discuss proposed regulation changes.
- October 3, 2024: Working Group annual meeting - Santa Rosa, Webinar.
- October 29-30, 2024: Dungeness crab task force meeting - Santa Rosa.
- November 7, 2024: Commission Marine Resources Committee meeting - Sacramento.

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

During the outreach period, alternatives to the regulation change were discussed. No other alternatives were identified or brought to the attention of Department staff that would have the same desired regulatory effect. The alternatives discussed are the following:

Alternative 1: Consider adding hoop nets to the recreational entanglement evaluation process. Members of the public were not supportive of this change since the two-hour service interval already precludes long soak periods to reduce entanglement risk by the use of this gear. Hoop net gear has not been positively identified in any known confirmed entanglements.

Alternative 2: Consider adding a gear reduction to the available management actions as part of the recreational entanglement evaluation process. Upon further discussions with recreational fishery constituents, this may not be an effective tool for reducing overall gear by the recreational sector since traps may be shared among users (subsection 29.80(c)(6)(A)).

Alternative 3: Only allow a main buoy with no optional marker buoy. During discussions with recreational fishery constituents, they stated the necessity for an additional buoy on the hoop net was due to removing the hoop net within the service interval period by the conclusion of a fishing trip. An additional buoy compensates for the effect of strong ocean currents pulling surface gear below the water line.

~~Alternative 4: Consider allowing up to 6 feet of surface line between the main buoy and marker buoy of hoop nets. Although hoop nets have not been attributed to entanglements, minimizing surface lines will also minimize risk of entanglements especially as this gear is allowed to be used when marine life concentration triggers are met resulting in a trap prohibition. By limiting surface line to be similar to what is required for crab traps can allow for the use of an additional buoy on the hoop net.~~

(b) No Change Alternative

Without change, hoop net surface gear may continue to use the same buoys as required on crab traps while tampering of another person's hoop nets would not be explicitly prohibited. In addition, the recreational entanglement evaluation would continue to assess entanglement risk solely based on triggers for marine life concentrations of protected species. The management actions available to the Director during periods of elevated risk would be limited to a fleet advisory or a crab trap prohibition with no intermediary action. The crab trap validation would be required for all users of crab traps regardless of fishing mode. Uniquely marked lines either could be purchased and used in the rigging of lines for recreational crab traps and hoop nets and misidentified as other fishing gear in confirmed U.S. West Coast entanglements.

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

None

V. Mitigation Measures Required by Regulatory Action

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures 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 because the proposed regulations are for a recreational marine fishery. CPFVs that take fishers on crab fishing trips using crab traps as a fleet will now be required to purchase a CPFV-specific validation at \$1,115.08 every 365 days [$\$18.28 \times 61$ vessels], while also indicating on their fishing logbooks the number of traps or hoop nets used per daily fishing trip in addition to the information they are already required to provide. There may be unrealized cost savings for serving customers on crab trap fishing trips since they are no longer required to purchase a trap validation. CPFVs also may need to purchase an additional buoy for any hoop nets deployed if they choose to use this for their operations, but it is not required. An optional ~~yellow~~ orange marker buoy could average \$15.00 that if utilized, would be placed theoretically on up to 25 hoop nets (no hoop net limits), resulting in industry costs of approximately ~~$\$30,214.06$~~ $\$42,128.43$ [$(\$375$ to add up to 25 buoys due to damage or loss, or $\$15.00 \times 25$ hoop net buoys) + (~~$\$120.34$~~ $\$240.63$ in labor costs, or $\$19.25/\text{hour} \times$ ~~0.25~~ 0.5 hours/hoop net $\times 25$ hoop nets per CPFV) + $\$75$ for 2 gallons of paint) $\times 61$ CPFVs], for a total of approximately $\$43,243.51$ in initial costs.

The expected annual replacement cost for buoys in subsequent years to replace lost or damaged buoys (assuming an annual gear loss rate of 20% resulting in 10 buoys needing to be replaced annually) is approximately ~~$\$10,618$~~ $\$12,086$ [$(\$150$ to replace up to 10 buoys due to damage or loss, or $\$15.00 \times 10$ hoop net buoys) + (~~$\$24.06$~~ $\$48.12$ in labor costs, or

$\$19.25/\text{hour} \times 0.25 \times 0.5 \text{ hours/hoop net} \times 5 \text{ hoop nets per CPFV}) \times 61 \text{ CPFVs}]$. The total economic impact of buoy costs and CPFV validation costs to CPFVs is approximately ~~\\$11,733~~ \\$13,201 annually.

(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 crabbing 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 potential for marine life entanglement risk. The approximate value of each prevented whale entanglement is \$2,530,945 per whale, see Section C. Estimated Benefits in the addendum to the STD 399.

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

Recreational crab fishers who solely use crab traps from CPFVs would no longer be required to purchase a Crab Trap Validation. However, CPFVs would be required to purchase a CPFV-specific validation [$\$18.28$ per validation (includes $\$17.75$ fee plus $\$0.53$ surcharge) \times approximately 61 vessels] that will be good for 365 days and could cover a recreational Dungeness crab season that spans two calendar years depending on time of purchase. Additionally, CPFVs that opt to use an additional buoy may realize additional costs of ~~\\$75~~ \\$150 a year if a buoy averages $\$15.00$ and they replace about 10 hoop net buoys annually, plus the labor cost of approximately ~~\\$24~~ \\$48 for installing the buoys [~~\\$24.06~~ \\$48.12 in labor costs, or $\$19.25/\text{hr} \times 0.25 \times 0.5 \text{ hours/hoop net} \times 5 \text{ hoop nets per CPFV}$] and $\$75$ for 2 gallons of paint for marking the lines. The total cost of the validation fee and buoy costs per CPFV is approximately ~~\\$194~~ \\$216.

Northern hoop net users who opt to use an additional buoy may realize initial costs of around $\$75$ if a buoy averages $\$15.00$ and they use about 5 hoop nets (no hoop net limits) that would require an additional buoy, and ongoing costs of $\$75$ in subsequent years to replace lost or damaged buoys.

(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 may be partially recovered with the CPFV-specific validation. An estimated $\$1,115.08$ in CPFV-specific validation revenue is anticipated to be collected by the Department annually. However, removing 1,615 fishers from the requirement to purchase a recreational crab trap validation by fishing from a CPFV would result in a $\$4,570.45$ loss in revenue for the Department, with a total net decrease of $\$3,455.37$ in

revenue for the Department. The Commission does not anticipate any savings to State agencies or cost/savings in 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.

VII. Economic Impact Assessment

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

The Commission does not anticipate impacts on the creation or elimination of jobs within the state because the proposed regulations are for a recreational marine fishery. The additional costs for CPFVs to purchase a CPFV-specific validation and marker buoys for hoop nets is not anticipated to result in the creation or elimination of jobs because these costs are a very small share of CPFV operating costs and would not change procedures so as to require more or less labor (up to ~~\$194~~\$216 per CPFV annually).

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

The Commission does not anticipate any new businesses, or elimination of existing businesses, because the proposed regulation is not likely to substantially increase or decrease recreational fishing activity within the state. The additional costs for CPFVs purchase a CPFV-specific validation and marker buoys for hoop nets is not anticipated to result in the creation or elimination of businesses because costs are a very small share of CPFV operating costs, and the supply of buoys is already sufficient to fulfill this requirement.

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

The Commission does not anticipate any effects on the expansion of businesses currently doing business in the State. The number of fishing days to use a crab trap during a Dungeness crab season may increase during periods of elevated risk when a depth constraint may be declared by the Director but this effect would not substantially increase or decrease recreational fishing activity within the State since many CPFVs have already switched gear types to use hoop nets during crab trap prohibitions.

The additional costs for CPFVs to purchase a CPFV-specific validation and marker buoys for hoop nets is not anticipated to result in the expansion of businesses because costs are a very

small share of CPFV operating costs, and the supply of buoys is already sufficient to fulfill this requirement.

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

Fishing is an outdoor activity that can provide several health and welfare benefits to California residents. Fishers and their families benefit from fresh fish to eat and from the benefits of outdoor recreation, including exercise. People who fish have a special connection with the outdoors and an awareness of the relationships between wildlife, habitat, and humans, and can be a family tradition and a bonding activity. As set forth in Fish and Game Code section 1700, it is the policy of the state to encourage the conservation, maintenance, and utilization of fish and wildlife resources for the benefit of all the citizens of the state. The objectives of this policy include, but are not limited to, the maintenance of populations of sport fish species to ensure their continued existence and supporting recreational opportunity. The fees that fishers pay for licenses and tags help fund wildlife conservation.

(e) Benefits of the Regulation to Worker Safety

The Commission does not anticipate any benefits to worker safety because the proposed regulation does not affect existing working conditions.

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

The regulation is anticipated to benefit the State's environment by reducing the potential for entanglements marine life species protected by the Endangered Species Act in fishing gear. Using existing literature about the ecosystem valuation of a whale's life as well as the value of whales to California's whale watching industry yields a benefit of \$2,530,945 per whale that avoids entanglement, see the addendum to the STD 399 for more information.

(g) Other Benefits of the Regulation

None.

Updated Informative Digest/Policy Statement Overview

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR). The Fish and Game Commission (Commission) proposes to amend sections 29.80, 29.85, 195, and 701, Title 14, California Code of Regulations (CCR).

Background

Current regulations for the recreational Dungeness crab fishery specify seasons, size limits, bag and possession limits, closed fishing areas, and gear restrictions. Crabs can also be taken recreationally by hand, crab trap, crab loop trap (snare), or hoop net. Hoop nets may be used year-round for taking of crustaceans and have a service interval of two hours (subsection 29.80(b)(2)) and considered abandoned if left out longer than two hours (subsection 29.80(b)(3)). Current regulations do not limit the number, size or color of buoys used on hoop net gear. Hoop nets (not used from shore) must have a surface buoy that is marked to indicate specific operator either by an individual's GO ID, Commercial Passenger Fishing Vessel's (CPFV's) vessel commercial boat registration number, or guide license's identification number (subsection 29.80(b)(5)). There is no limit on the number of hoop nets that may be operated by an individual or CPFV when used north of Point Arguello, Santa Barbara County (subsection 29.80(b)(4)(B)).

CPFVs take customers on fishing trips and provide fishing gear, either with hoop nets or crab traps. Customers are required to have the proper licenses on board including a crab trap validation when CPFV's use traps. The owner and operator of a CPFV is required to keep and submit a complete and accurate record of fishing activities on a logbook (subsections 190(a) and 190(b)).

Recreational crab traps are evaluated for marine life entanglement risk during the Dungeness crab season under a marine life concentration trigger (subsection 29.80(c)(7)(A)). Under the recreational evaluation when marine life concentration triggers are met, the Director may declare a management action by RAMP Fishing Zone (subsection 29.80(c)(7)(C)). The only management actions the Director can implement are the following: a fleet advisory to employ voluntary practices, a trap prohibition at the start or end of the recreational Dungeness crab season or lifting of any trap prohibition (subsection 29.80(c)(7)(B)). This recreational entanglement evaluation regulatory framework also references definitions and management triggers described in the RAMP regulation (Section 132.8) for the commercial Dungeness crab fishery.

Proposed Changes

The proposed changes focus on updates to recreational crab gear restrictions to update use of hoop nets, provide additional tools to address entanglement risk of recreational crab traps, and prohibit unique line marks required in other fisheries from being used in recreational gear. They also address a regulations change petition (#2022-11) requesting the establishment of a CPFV validation so that CPFV customers would no longer be required to have a trap validation.

This is the summary of proposed regulations to recreational crab gear:

- **Add a hoop net tampering prohibition:** The proposed regulation would prevent unlawful tampering of hoop nets. (Proposed subsection 29.80(a)(3)(B)).
- **Prohibit the use of other West Coast fisheries' unique line marks/colors on hoop net and crab trap gear:** The proposed regulation would prohibit recreational gear for take of crustaceans from using another fishery's unique line marking. (Proposed subsection 29.80(a)(4)).
- **Clarify surface gear requirements for northern hoop nets:** The proposed regulation would standardize surface gear configurations of hoop nets used north of Point Arguello, Santa Barbara County. An optional marker buoy will be allowed that is orange in color and marked on two opposing sides with the unique letter "H." The surface line length will be set at a maximum of 12 feet, and unique line marking is required when the line exceeds 6 feet. (Proposed subsection 29.80(b)(5)).
- **Update the marine life entanglement evaluation process:** The proposed regulation would add a trigger for confirmed entanglements of any protected species referenced in RAMP as well as a depth constraint under the available management actions (Proposed subsections 29.80(c)(7)(A), 29.80(c)(7)(B), and 29.80(c)(7)(D)).
- **Add a separate CPFV crab trap validation:** The proposed regulation would modify the current trap validation, creating a separate CPFV validation. In addition, new fields will be added to the CPFV logbook and a new fee for the CPFV validation. (Proposed subsections 29.85(a), 195(a), 195(b), 195(d), 701(i), and 701(j)).

The proposed regulatory package also includes clarifying and non-substantive edits to Section 29.80 and 29.85.

Benefits of the Regulations

The proposed regulations would clarify and improve enforceability of current regulations for hoop nets. Regulations support a petition request that also improves data collection efforts to inform fishery management. The proposal better aligns management of the recreational sector with the commercial fishery in mitigating entanglement risk of marine animals protected by the federal Endangered Species Act and Marine Mammal Protection Act. Lastly, the proposal parallels U.S. West Coast efforts to require uniquely marked gear by ensuring these required marks in other fisheries are prohibited in California recreational crustacean gear. Northern hoop net surface gear will also require unique line marking that aligns with this initiative when an additional buoy is used and surface line lengths exceed 6 feet.

Consistency and Compatibility with Existing Regulations

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Section 20, Article IV, of the state Constitution specifies that the Legislature may delegate to the Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to adopt regulations governing recreational fishing regulations (Fish and Game Code sections 200, 205, 315, and 316.5). No other state agency has the authority to adopt regulations

governing recreational fishing regulations. The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the CCR for any regulations regarding the adoption of recreational crab fishing regulations; therefore, the Commission has concluded that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.