

Appendix B: Relevant California Statute and Regulations

Statutory Sections: Fish and Game Code

§ 90.1. "Adaptive management"

"Adaptive management," in regard to a marine fishery, means a scientific policy that seeks to improve management of biological resources, particularly in areas of scientific uncertainty, by viewing program actions as tools for learning. Actions shall be designed so that even if they fail, they will provide useful information for future actions. Monitoring and evaluation shall be emphasized so that the interaction of different elements within the system can be better understood.

§ 2080. Prohibition

No person or public agency shall import into this state, export out of this state, or take, possess, purchase, or sell within this state, any species, or any part or product thereof, that the commission determines to be an endangered species or a threatened species, or attempt any of those acts, except as otherwise provided in this chapter, the Native Plant Protection Act (Chapter 10 (commencing with [Section 1900](#)) of this code), or the California Desert Native Plants Act (Division 23 (commencing with [Section 80001](#)) of the [Food and Agricultural Code](#)).

§ 2081. Notice and determination as to incidental take

The department may authorize acts that are otherwise prohibited pursuant to Section 2080, as follows:

(a) Through permits or memorandums of understanding, the department may authorize individuals, public agencies, universities, zoological gardens, and scientific or educational institutions, to import, export, take, or possess any endangered species, threatened species, or candidate species for scientific, educational, or management purposes.

(b) The department may authorize, by permit, the take of endangered species, threatened species, and candidate species if all of the following conditions are met:

(1) The take is incidental to an otherwise lawful activity.

(2) The impacts of the authorized take shall be minimized and fully mitigated.

The measures required to meet this obligation shall be roughly proportional in extent to the impact of the authorized taking on the species. Where various measures are available to meet this obligation, the measures required shall maintain the applicant's objectives to the greatest extent possible. All required measures shall be capable of successful implementation. For purposes of this section only, impacts of taking include all impacts on the species that result from any act that would cause the proposed taking.

(3) (A) The applicant shall ensure adequate funding to implement the measures required by paragraph (2), and for monitoring compliance with, and effectiveness of, those measures.

(B) For purposes of this section, transportation funding identified in the State Highway System Management Plan shall be presumed to ensure adequate funding for the long-term maintenance of a habitat connectivity or wildlife corridor structure on the state highway system, but not for the habitat on or around the structure. To ensure adequate funding to maintain the habitat on or around the structure, the applicant shall provide an endowment.

(c) No permit may be issued pursuant to subdivision (b) if issuance of the permit would jeopardize the continued existence of the species. The department shall make this determination based on the best scientific and other information that is reasonably available, and shall include consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities.

(d) The department shall adopt regulations to aid in the implementation of subdivision (b) and the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code, with respect to authorization of take. The department may seek certification pursuant to Section 21080.5 of the Public Resources Code to implement subdivision (b).

(e) Commencing January 1, 2019, the department shall post each new permit issued pursuant to subdivision (b) on its internet website within 15 days of the effective date of the permit.

§ 4700. Enumeration of fully protected mammals; Prohibition against taking; Power to authorize collecting for scientific research

(a) (1) Except as provided in this section or Section 2081.7, 2081.15, or 2835, a fully protected mammal may not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected mammal, and no permit or license previously issued shall have any force or effect for that purpose. However, the department may authorize the taking of a fully protected mammal for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Before authorizing the take of a fully protected mammal, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of that person's interest in fully protected species and who has provided an email address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide relevant information and comments on the proposed authorization.

(2) As used in this subdivision, "scientific research" does not include an action taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) A legally imported fully protected mammal may be possessed under a permit issued by the department.

(b) The following are fully protected mammals:

- (1) Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*).
- (2) Bighorn sheep (*Ovis canadensis*), except Nelson bighorn sheep (subspecies *Ovis canadensis nelsoni*) as provided by subdivision (b) of Section 4902.
- (3) Northern elephant seal (*Mirounga angustirostris*).
- (4) Guadalupe fur seal (*Arctocephalus townsendi*).
- (5) Ring-tailed cat (genus *Bassariscus*).
- (6) Pacific right whale (*Eubalaena sieboldi*).
- (7) Salt-marsh harvest mouse (*Reithrodontomys raviventris*).
- (8) Southern sea otter (*Enhydra lutris nereis*).
- (9) Wolverine (*Gulo luscus*).

§ 5523. Area closure due to high level of toxic substances; Delay in opening of Dungeness crab season

(a) (1) If the Director of Environmental Health Hazard Assessment, in consultation with the State Public Health Officer, determines, based on thorough and adequate scientific evidence, that any species or subspecies of fish is likely to pose a human health risk from high levels of toxic substances, the Director of Fish and Wildlife may order the closure of any waters or otherwise restrict the taking in state waters of that species.

(2) After the Director of Fish and Wildlife orders the closure of any waters or restricts the taking of any species of fish pursuant to paragraph (1), the Director of Fish and Wildlife shall notify the commission and request that the commission schedule a public discussion of the closure or restriction at its next scheduled full commission meeting.

(3) A fishing vessel may transit closed waters in possession of species where take is otherwise restricted pursuant to paragraph (1) if the vessel adheres to electronic monitoring requirements specified by the department.

(b) (1) When the Director of Environmental Health Hazard Assessment, in consultation with the State Public Health Officer, determines that a health risk no longer exists, the Director of Environmental Health Hazard Assessment shall notify

the Director of Fish and Wildlife and shall request that any waters closed pursuant to subdivision (a) be reopened for fishing and any restrictions imposed pursuant to subdivision (a) be lifted.

(2) Upon receiving the notification and request pursuant to paragraph (1), the Director of Fish and Wildlife shall open any waters closed pursuant to subdivision (a) and lift any restrictions imposed pursuant to subdivision (a) in a manner that promotes a fair and orderly fishery.

(c) It is unlawful to take any fish from any closed waters or to otherwise violate any restriction on take imposed pursuant to this section.

(d) If there is a delay in the opening of any waters for Dungeness crab season pursuant to this section, the Director of Fish and Wildlife may further delay opening those waters in order to provide 72-hours' notice before a gear setting period. If, with 72-hours' notice, the gear setting period would begin on a federal holiday, a state holiday, the day before Thanksgiving Day, December 24, or December 31, the Director of Fish and Wildlife may delay opening those waters for the additional time that is necessary to begin the gear setting period on the next day that is not one of those days.

(e) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to actions taken pursuant to this section.

§ 7050. Legislative findings and declarations; State policy and objective

(a) The Legislature finds and declares that the Pacific Ocean and its rich marine living resources are of great environmental, economic, aesthetic, recreational, educational, scientific, nutritional, social, and historic importance to the people of California.

(b) It is the policy of the state to ensure the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the state. The objective of this policy shall be to accomplish all of the following:

(1) Conserve the health and diversity of marine ecosystems and marine living resources.

(2) Allow and encourage only those activities and uses of marine living resources that are sustainable.

(3) Recognize the importance of the aesthetic, educational, scientific, and recreational uses that do not involve the taking of California's marine living resources.

(4) Recognize the importance to the economy and the culture of California of sustainable sport and commercial fisheries and the development of commercial aquaculture consistent with the marine living resource conservation policies of this part.

- (5) Support and promote scientific research on marine ecosystems and their components to develop better information on which to base marine living resource management decisions.
- (6) Manage marine living resources on the basis of the best available scientific information and other relevant information that the commission or department possesses or receives.
- (7) Involve all interested parties, including, but not limited to, individuals from the sport and commercial fishing industries, aquaculture industries, coastal and ocean tourism and recreation industries, marine conservation organizations, local governments, marine scientists, and the public in marine living resource management decisions.
- (8) Promote the dissemination of accurate information concerning the condition of, or management of, marine resources and fisheries by seeking out the best available information and making it available to the public through the marine resources management process.
- (9) Coordinate and cooperate with adjacent states, as well as with Mexico and Canada, and encourage regional approaches to management of activities and uses that affect marine living resources. Particular attention shall be paid to coordinated approaches to the management of shared fisheries.

§ 7055. Legislative findings and declarations regarding state policy

The Legislature finds and declares that it is the policy of the state that:

- (a) California's marine sport and commercial fisheries, and the resources upon which they depend, are important to the people of the state and, to the extent practicable, shall be managed in accordance with the policies and other requirements of this part in order to assure the long-term economic, recreational, ecological, cultural, and social benefits of those fisheries and the marine habitats on which they depend.
- (b) Programs for the conservation and management of the marine fishery resources of California shall be established and administered to prevent overfishing, to rebuild depressed stocks, to ensure conservation, to facilitate long-term protection and, where feasible, restoration of marine fishery habitats, and to achieve the sustainable use of the state's fishery resources.
- (c) Where a species is the object of sportfishing, a sufficient resource shall be maintained to support a reasonable sport use, taking into consideration the necessity of regulating individual sport fishery bag limits to the quantity that is sufficient to provide a satisfying sport.
- (d) The growth of commercial fisheries, including distant-water fisheries, shall be encouraged.

§ 7056. Objectives of fishery system

In order to achieve the primary fishery management goal of sustainability, every sport and commercial marine fishery under the jurisdiction of the state shall be managed under a system whose objectives include all of the following:

- (a) The fishery is conducted sustainably so that long-term health of the resource is not sacrificed in favor of short-term benefits. In the case of a fishery managed on the basis of maximum sustainable yield, management shall have optimum yield as its objective.
- (b) The health of marine fishery habitat is maintained and, to the extent feasible, habitat is restored, and where appropriate, habitat is enhanced.
- (c) Depressed fisheries are rebuilt to the highest sustainable yields consistent with environmental and habitat conditions.
- (d) The fishery limits bycatch to acceptable types and amounts, as determined for each fishery.
- (e) The fishery management system allows fishery participants to propose methods to prevent or reduce excess effort in marine fisheries.
- (f) Management of a species that is the target of both sport and commercial fisheries or of a fishery that employs different gears is closely coordinated.
- (g) Fishery management decisions are adaptive and are based on the best available scientific information and other relevant information that the commission or department possesses or receives, and the commission and department have available to them essential fishery information on which to base their decisions.
- (h) The management decisionmaking process is open and seeks the advice and assistance of interested parties so as to consider relevant information, including local knowledge.
- (i) The fishery management system observes the long-term interests of people dependent on fishing for food, livelihood, or recreation.
- (j) The adverse impacts of fishery management on small-scale fisheries, coastal communities, and local economies are minimized.
- (k) Collaborative and cooperative approaches to management, involving fishery participants, marine scientists, and other interested parties are strongly encouraged, and appropriate mechanisms are in place to resolve disputes such as access, allocation, and gear conflicts.
- (l) The management system is proactive and responds quickly to changing environmental conditions and market or other socioeconomic factors and to the concerns of fishery participants.
- (m) The management system is periodically reviewed for effectiveness in achieving sustainability goals and for fairness and reasonableness in its interaction with people affected by management.

§ 8043. Landing receipt; Form and contents

(a) Every commercial fisherman who sells or delivers fish that he or she has taken to any person who is not licensed under Article 7 (commencing with Section 8030), and every person who is required to be licensed under Article 7 (commencing with Section 8030) to conduct the activities of a fish receiver, as described in Section 8033, shall make a legible landing receipt record on a form to be furnished by the department. The landing receipt shall be completed at the time of the receipt, purchase, or transfer of fish, whichever occurs first.

(b) The landing receipt shall show all of the following:

- (1) The accurate weight of the species of fish received, as designated pursuant to Section 8045. Sablefish may be reported in dressed weight, and if so reported, shall have the round weights computed, for purposes of management quotas, by multiplying 1.6 times the reported dressed weight.
- (2) The name of the fisherman and the fisherman's identification number.
- (3) The department registration number of the boat.
- (4) The recipient's name and identification number, if applicable.
- (5) The date of receipt.
- (6) The price paid.
- (7) The department origin block number where the fish were caught.
- (8) The type of gear used.
- (9) Any other information the department may prescribe.

(c) The numbered landing receipt forms in each individual landing receipt book shall be completed sequentially. A voided fish landing receipt shall have the word "VOID" plainly and noticeably written on the face of the receipt. A voided fish landing receipt shall be submitted to the department in the same manner as a completed fish landing receipt is submitted to the department. A fish receiver who is no longer conducting business as a licensed receiver shall forward all unused landing receipts and landing receipt books to the department immediately upon terminating his or her business activity.

§ 8276. Season; Restrictions on taking for commercial purposes

Except as provided in Section 8276.2 or 8277:

(a) Dungeness crab may be taken for commercial purposes in Districts 6, 7, 8, and 9 only between December 1 and July 15.

(b) Dungeness crab may be taken for commercial purposes in all other districts only between November 15 and June 30.

(c) Dungeness crab may not be taken for commercial purposes in any district, or part of a district, lying within the portions of Crescent City Harbor between the south sand barrier and the breakwater.

(d) All Dungeness crab traps shall be removed from state waters by 11:59 p.m. on the last day of the applicable Dungeness crab season.

§ 8276.1. Dungeness crab; Risk of marine life entanglement; Management options

(a) For purposes of this section, the following definitions apply:

(1) "California Dungeness Crab Fishing Gear Working Group" means the California Dungeness Crab Fishing Gear Working Group established by the department, in partnership with the Ocean Protection Council and the National Marine Fisheries Service, on September 21, 2015, and as defined by its most recent charter as it may be amended from time to time.

(2) "Risk assessment and mitigation program" means the program developed by the California Dungeness Crab Fishing Gear Working Group, as that program may be amended from time to time until the regulations are adopted pursuant to subdivision (b), to identify and assess elevated levels of entanglement risk and determine the need for management options to reduce the risk of entanglement.

(b) On or before November 1, 2020, the department, in consultation with the California Dungeness Crab Fishing Gear Working Group and other stakeholders, shall adopt regulations establishing criteria and protocols to evaluate and respond to the potential risk of marine life entanglement. The regulations shall include, but are not limited to, the risk assessment and mitigation program. Upon the effective date of the regulations, the director may restrict the take of Dungeness crab pursuant to the protocols and criteria.

(c) (1) Until the regulations adopted pursuant to subdivision (b) become effective or until November 1, 2020, whichever occurs first, if the director, in consultation with the California Dungeness Crab Fishing Gear Working Group, determines that the California Dungeness crab fishery is being conducted in a manner that poses a significant risk of marine life entanglement, the director may restrict the take of Dungeness crab in those areas where that risk has been determined to exist, including through time or area closures, or both.

(2) The authority of the director provided pursuant to paragraph (1) shall be temporary and shall expire upon the effective date of the regulations described in subdivision (b) or upon the expiration of that authority pursuant to subdivision (e), whichever occurs first.

(3) The director shall evaluate the following factors to determine if there is a significant risk of marine life entanglement and the appropriate management response:

- (A) The conditions inherent to the fishery, such as safety of life at sea, weather, vessel operations, and other related issues.
- (B) The duration of any delays in the normal start of the fishery.
- (C) Indications of anomalous ocean or forage conditions, or both, in the current season.
- (D) The known location of marine life of concern.
- (E) The known location and intensity of fishing effort.
- (F) The number of confirmed marine life entanglements documented in advance of or during the current fishing season.
- (G) The existence and prevalence of factors that may result in significant risk of marine life entanglement.
- (H) The likelihood of exceeding the potential biological removal level of a marine life species.
- (I) The socioeconomic impacts of any management response to fishery stakeholders.

(4) (A) After making a preliminary determination pursuant to paragraph (1) that a significant risk of marine life entanglement exists, the director shall provide 48 hours' notice to the California Dungeness Crab Fishing Gear Working Group and other stakeholders before taking any action to close the fishery or otherwise restrict the take of Dungeness crab.

(B) The notice shall provide the information supporting the director's determination of a significant risk of marine life entanglement as well as the anticipated management response.

(C) The director shall consider any recommendations or new information provided by the California Dungeness Crab Fishing Gear Working Group or any member of the public within the 48-hour notice period in advance of enacting any management measures pursuant to this subdivision.

(5) Any time or area closures, or both, implemented pursuant to this subdivision shall, while providing for adequate reduction of risk to marine life, be minimized in duration and extent.

(6) The director shall expeditiously lift any restriction in waters pursuant to this subdivision if the director determines, in consultation with the California Dungeness Crab Fishing Gear Working Group, that the significant risk of marine life entanglement in those waters has abated.

(7) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to actions taken pursuant to this subdivision.

(d) It is unlawful to take or possess Dungeness crab from any waters closed, or otherwise violate any restriction on take imposed, pursuant to this section.

(e) If the department has not developed the regulations pursuant to subdivision (b) by November 1, 2020, the power of the director to exercise the authority described in subdivision (c) shall become inoperative on November 1, 2020.

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

§ 8276.2. Authority of director to order delay in opening of crab fishery; Quality testing

(a) The director may order a delay in the opening of the Dungeness crab fishery after December 1 in Districts 6, 7, 8, and 9 in any year. The delay in the opening shall not be later than January 15 of any year.

(b) (1) On or about November 1 of each year, the director may authorize one or more operators of commercial fishing vessels to take and land a limited number of Dungeness crab for the purpose of quality testing according to a testing program conducted by, or on behalf of, the Pacific States Marine Fisheries Commission or an entity approved by the department.

(2) (A) The meat extracted from Dungeness crab tested pursuant to paragraph (1) may be sold by the entity approved by the department and revenues from that sale may be used for purposes of managing the testing program. Revenues shall be deposited in an account managed and overseen by the Pacific States Marine Fisheries Commission.

(B) For purposes of the testing program, the department shall develop guidelines after consulting with representatives of the California Dungeness crab industry, which shall include California delegates to the Tri-State Dungeness Crab Commission or members of the California Dungeness Crab Task Force, or both. The guidelines shall include the following:

(i) Suggested guidelines for the management of the funds received from, but not limited to, the sale of the crab meat pursuant to subparagraph (A), including the suggested guideline that funds in excess of the program costs may be donated for charitable purposes.

(ii) Guidelines for the testing program.

(iii) Guidelines that establish measures to track crab caught for purposes of the testing program, including, but not limited to, the guideline that all crab caught and sold for the testing program shall be canned.

(c) The director shall order the opening of the Dungeness crab season in Districts 6, 7, 8, and 9 on December 1 if the quality tests authorized in subdivision (b) indicate the Dungeness crabs are not soft-shelled or low quality. The entity authorized to conduct the approved testing program may test, or cause to be tested, crabs taken for quality and soft shells pursuant to the approved testing program. If the tests are conducted on or about November 1 and result in a finding that Dungeness crabs are soft-shelled or low quality, the director shall authorize a second test to be conducted on or about November 15 pursuant to the approved testing program. If the second test results in a finding that Dungeness crabs are soft-shelled or low quality, the director may order the season opening delayed for a period of 15 days and may authorize a third test to be conducted on or about December 1. If the third test results in a finding that Dungeness crabs remain soft-shelled or of low quality, the director may order the season opening delayed for a period of an additional 15 days and authorize a fourth test to be conducted. This procedure may continue to be followed, except that tests shall not be conducted after January 15 for that season, and the season opening shall not be delayed by the director later than January 15.

(d) This section shall become inoperative on April 1, 2029, and, as of January 1, 2030, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2030, deletes or extends the dates on which it becomes inoperative and is repealed.

§ 8276.5. Dungeness crab trap limits program to be adopted; Program requirements; Permitholder exceptions; Participant requirements; Appeal of trap tag allocation; Civil penalties; Recommendations

(a) In consultation with the Dungeness crab task force, or its appointed representatives, the director shall adopt a program, by March 31, 2013, for Dungeness crab trap limits for all California permits. Unless the director finds that there is consensus in the Dungeness crab industry that modifications to the following requirements are more desirable, with evidence of consensus, including, but not limited to, the record of the Dungeness crab task force, the program shall include all of the following requirements:

(1) The program shall contain seven tiers of Dungeness crab trap limits based on California landings receipts under California permits between November 15, 2003, and July 15, 2008, as follows:

(A) The 55 California permits with the highest California landings shall receive a maximum allocation of 500 trap tags.

(B) The 55 California permits with the next highest California landings to those in subparagraph (A) shall receive a maximum allocation of 450 trap tags.

(C) The 55 California permits with the next highest California landings to those in subparagraph (B) shall receive a maximum allocation of 400 trap tags.

(D) The 55 California permits with the next highest California landings to those in subparagraph (C) shall receive a maximum allocation of 350 trap tags.

(E) The 55 California permits with the next highest California landings to those in subparagraph (D) shall receive a maximum allocation of 300 trap tags.

(F) The remaining California permits with the next highest California landings to those in subparagraph (E), which are not described in paragraph (1) or (2) of subdivision (i) of Section 8276.4, shall receive a maximum allocation of 250 trap tags.

(G) The California permits described in paragraphs (1) and (2) of subdivision (i) of Section 8276.4 shall receive a maximum allocation of 175 trap tags. The trap tags in this tier shall not be transferable for the first two years of the program.

(2) Notwithstanding paragraph (1), the director shall not remove a permitholder from a tier described in paragraph (1), if, after an allocation is made pursuant to paragraph (1), an appeal pursuant to paragraph (8) places a permitholder in a tier different than the original allocation.

(3) Participants in the program shall meet all of the following requirements:

(A) Unless a participant receives a waiver pursuant to paragraph (4), pay a biennial fee for each trap tag issued pursuant to this section to pay the pro rata share of costs of the program, including, but not limited to, informing permitholders of the program, collecting fees, acquiring and sending trap tags to permitholders, paying for a portion of enforcement costs, and monitoring the results of the program. The fee shall not exceed five dollars (\$5) per trap, per two-year period. All of the trap tags allocated to each permit pursuant to subdivision (a) shall be purchased by the permitholder or the permit shall be void.

(B) Purchase a biennial crab trap limit permit of not more than one thousand dollars (\$1,000) per two-year period to pay for the department's reasonable regulatory costs.

(C) Not lease a crab trap tag, and transfer a tag only as part of a transaction to purchase a California permitted crab vessel.

(D) A Dungeness crab trap that is fished shall contain a trap tag that is fastened to the main buoy, and an additional tag provided by the permitholder attached to the trap. The department shall mandate the information that is required to appear on both buoy and trap tags.

(4) The department shall issue a participant a waiver from the biennial fee for each trap tag described in subparagraph (A) of paragraph (3) if the

participant is unable to fish due to mandatory military service and the participant submits a request for a waiver to the department at the same time that the participant renews the permit issued pursuant to subparagraph (B) of paragraph (3). A participant who receives a waiver pursuant to this paragraph shall not apply to the department to fish for Dungeness crab during the first year of the waiver, but may apply to fish for Dungeness crab during the second year of the waiver if the participant pays the full cost of the biennial fee for each trap tag. The department shall not limit the number of times a participant may request a waiver.

(5) Notwithstanding subparagraph (D) of paragraph (3), a vessel may transit state waters with Dungeness crab traps that are not tagged pursuant to subparagraph (D) of paragraph (3) if the traps contain either a valid Oregon or Washington trap tag, no crab species are onboard the vessel, and the traps are not deployed in state waters.

(6) The department shall annually provide an accounting of all costs associated with the crab trap limit program. The department shall use excess funds collected to reduce the cost of the crab trap limit permit fee or tag fee in subsequent years of the program.

(7) Permitholders may replace lost tags by application to the department and payment of a fee not to exceed the reasonable costs incurred by the department. The department may waive or reduce a fee in the case of catastrophic loss of tags.

(8) Any Dungeness crab permitholder may submit to the director an appeal of a trap tag allocation received pursuant to this section, by March 31, 2014, on a permit-by-permit basis for the purpose of revising upward or downward any trap tag allocation. Any appeal to revise upward a trap tag allocation shall be based on evidence that a permit's California landings during the period between November 15, 2003, and July 15, 2008, inclusive, were reduced as a result of unusual circumstances and that these circumstances constitute an unfair hardship, taking into account the overall California landings history as indicated by landing receipts associated with the permit. The director shall initiate the appeal process within 12 months of receiving an appeal request. The appeal shall be heard and decided by an administrative law judge of the Office of Administrative Hearings, whose decision shall constitute the final administrative decision. Except as provided in subparagraph (B), any Dungeness crab permitholder requesting an appeal to revise upward the permitholder's trap tag allocation shall pay all expenses, including a nonrefundable filing fee, as determined by the department, to pay for the department's reasonable costs associated with the appeal process described in this paragraph.

(b) (1) In addition to criminal penalties authorized by law, a violation of the requirements of the program created pursuant to this section shall be subject to the following civil penalties:

(A) Conviction of a first offense shall result in a fine of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000) per illegal trap or fraudulent tag.

(B) Conviction of a second offense shall result in a fine of not less than five hundred dollars (\$500) and not more than two thousand five hundred dollars (\$2,500) per illegal trap or fraudulent tag, and the permit may be suspended for one year.

(C) Conviction of a third offense shall result in a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) per illegal trap or fraudulent tag, and the permit may be permanently revoked.

(2) The severity of a penalty within the ranges described in this subdivision shall be based on a determination whether the violation was willful or negligent and other factors.

(3) The portion of monetary judgments for noncompliance that are paid to the department shall be deposited in the Dungeness Crab Account created pursuant to subdivision (e).

(c) For the purposes of this section, a proposed recommendation that receives an affirmative vote of at least two-thirds of the voting members of the Dungeness crab task force may be transmitted to the director or the Legislature as a recommendation, shall be considered to be the consensus of the task force, and shall be considered to be evidence of consensus in the Dungeness crab industry. Any proposed recommendation that does not receive a vote sufficient to authorize transmittal to the director or Legislature as a recommendation shall be evidence of a lack of consensus by the Dungeness crab task force, and shall be considered to be evidence of a lack of consensus in the crab industry.

(d) The director may modify the program adopted pursuant to subdivision (a), if consistent with the requirements of this section, 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 director may implement the modifications earlier than 60 days after it is sent to the Dungeness crab task force for review, if recommended by the task force.

(e) The Dungeness Crab Account is hereby established in the Fish and Game Preservation Fund and the fees collected pursuant to this section shall be deposited in that account. The money in the account shall be used as follows:

(1) By the department, upon appropriation by the Legislature, for administering and enforcing the program.

(2) In each fiscal year through the 2029 fiscal year, upon appropriation by the Legislature, of the amount remaining in the account after an allocation pursuant to paragraph (1), the sum of one hundred fifty thousand dollars

(\$150,000), if available, shall be allocated to the council to support the administration and facilitation of the Dungeness crab task force.

(f) For purposes of meeting the necessary expenses of initial organization and operation of the program until fees may be collected, or other funding sources may be received, the department may borrow money as needed for these expenses from the council. The borrowed money shall be repaid within one year from the fees collected or other funding sources received. The council shall give high priority to providing funds or services to the department, in addition to loans, to assist in the development of the program, including, but not limited to, the costs of convening the Dungeness crab task force, environmental review, and the department's costs of attending meetings with task force members.

(g) (1) It is the intent of the Legislature that the department, the council, and the Dungeness crab task force work with the Pacific States Marine Fisheries Commission and the Tri-State Dungeness Crab Commission to resolve any issues pertaining to moving the fair start line south to the border of California and Mexico.

(2) For purposes of this subdivision, the resolution of issues pertaining to the fair start line shall be limited to assessing the positive and negative implications of including District 10 in the tri-state agreement, including working with the Tri-State Dungeness Crab Commission to amend Oregon and Washington laws to include District 10 in the regular season fair start clause, and discussion of providing different rules for District 10 with regard to preseason quality testing.

(h) For purposes of this section, "council" means the Ocean Protection Council established pursuant to Section 35600 of the Public Resources Code.

(i) This section shall become inoperative on April 1, 2029, and, as of January 1, 2030, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2030, deletes or extends the dates on which it becomes inoperative and is repealed.

§ 8279.1. Restrictions on taking of Dungeness crabs; Restrictions relating to ocean waters off Washington, Oregon, or California; Penalty for violation

(a) A person shall not take, possess onboard, or land Dungeness crab for commercial purposes from a vessel in ocean waters for 30 days after the opening of those waters for the commercial Dungeness crab fishing season, if both of the following events have occurred:

(1) The opening of the season has been delayed in those waters.

(2) The same vessel was used to take, possess onboard, or land Dungeness crab for commercial purposes, from ocean waters outside of the delayed waters, before the opening of the delayed waters for the season.

(b) For purposes of this section, a delay in the opening of ocean waters for the commercial Dungeness crab fishing season has occurred in either of the following circumstances:

(1) The opening of those waters for the season has been delayed pursuant to Section 5523 or 8276.2 or the regulations adopted pursuant to Section 8276.1.

(2) The opening of those waters for the season has been delayed in Oregon or Washington due to the tri-state quality testing program or by a closure to prevent a risk to human health or a risk of marine life entanglement.

(c) A violation of this section does not constitute a misdemeanor. Pursuant to Section 7857, the commission shall revoke the Dungeness crab vessel permit that was issued for use on the vessel that was used in violation of this section.

(d) This section shall become inoperative on April 1, 2029, and, as of January 1, 2030, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2030, deletes or extends the dates on which it becomes inoperative and is repealed.

§ 8283. Permission to set traps in advance of season

Crab traps may be set and baited 64 hours before the opening date of the Dungeness crab season. Crab traps may be set and baited in advance of that opening date if no other attempt is made to take or possess Dungeness crab.

§ 8583. Purpose of article; Sale or possession of marlin

(a) By March 31, 2020, the department shall establish a program to transition the holders of drift gill net permits issued pursuant to Section 8561 out of the drift gill net fishery that includes the following conditions:

(1) A permittee who chooses to participate in the transition program shall indicate the permittee's intention to the department to participate by submitting a notarized form provided by the department on or before January 1, 2020.

(2) A permittee who has landed swordfish or thresher shark with a shark or swordfish gill net or with a deep-set buoy gear authorized pursuant to a federal exempted fishing permit between April 1, 2012, and March 31, 2018, inclusive, and who voluntarily surrenders the permittee's drift gill net permit issued pursuant to Section 8561 and shark or swordfish gill net or nets shall receive, to the extent that funds for the transition program are available, the following amounts:

(A) Ten thousand dollars (\$10,000) to surrender the permit.

(B) One hundred thousand dollars (\$100,000) to surrender the net or nets.

(3) A permittee who has not landed swordfish or thresher shark on or after April 1, 2012, and who voluntarily surrenders the permittee's drift gill net permit issued pursuant to Section 8561 and shark or swordfish gill net or nets shall receive, to the extent that funds for the transition program are available, ten thousand dollars (\$10,000).

(4) The department shall inform a permittee who submits a notarized form pursuant to paragraph (1) whether the permittee meets the requirements of paragraph (2) or (3) and the department shall submit this information to the fiscal agent.

(5) Any permittee who participates in the transition program by surrendering the permittee's permit pursuant to paragraph (2) or (3) shall be prohibited from obtaining a new California drift gill net shark and swordfish permit, shall agree not to fish under a federal drift gill net permit, shall agree not to transfer or renew a federal drift gill net permit, and shall surrender the permittee's shark or swordfish gill net or nets to an entity approved by the department for the purpose of destroying the nets.

(b) (1) The department shall enter into an agreement with a fiscal agent for the fiscal agent to receive state and nonstate funds made available for purposes of the transition program, to put those funds in an escrow account, and, upon the receipt of adequate funds, to pay the applicable amount described in subdivision (a) to a participating permittee. As part of the agreement, the department shall require the fiscal agent to notify the department within 10 days of the receipt of one million dollars (\$1,000,000) from nonstate sources for purposes of transitioning permittees out of the drift gill net fishery. If the department enters into an agreement with a fiscal agent that is a state entity pursuant to this subdivision, notwithstanding Section 13340 of the Government Code, any funds received from nonstate sources are continuously appropriated to that state entity for purposes of the transition program without regard to fiscal years.

(2) The department shall notify the Legislature pursuant to Section 9795 of the Government Code within 10 days of the date that the fiscal agent receives one million dollars (\$1,000,000) from nonstate sources for purposes of the transition program and secures one million dollars (\$1,000,000) through an agreement with the Ocean Protection Council pursuant to Section 35651 of the Public Resources Code.

(3) For purposes of this section, "fiscal agent" includes any of the following:

- (A) The Department of Finance.
- (B) The Pacific States Marine Fisheries Commission.
- (C) The Controller.
- (D) Any appropriate state or federal agency.

§ 9002.5. Development of regulations for retrieval of lost or abandoned commercial crab traps

(a) Notwithstanding Section 9002, the department, in consultation with the Dungeness crab task force, shall establish a retrieval program to provide for the

retrieval of lost or abandoned commercial Dungeness crab traps by June 30, 2019.

(b) The retrieval program developed pursuant to subdivision (a) shall be consistent with all of the following:

(1) (A) The department shall establish a retrieval permit that grants a person who obtains a retrieval permit the authority to retrieve Dungeness crab traps located in ocean waters belonging to another person without written permission from that person during both of the following periods of time:

(i) The closed season of the Dungeness crab commercial fishery, as described in Section 8276.

(ii) A period of time other than the time period described in clause (i) in which the director restricts the take of Dungeness crab pursuant to Section 8276.1 or regulations adopted pursuant to that section, if the director authorizes retrieval permitholders to retrieve traps during that time period.

(B) The department may establish any qualifications it deems necessary for a person to obtain a retrieval permit.

(C) The department shall require a permit fee in an amount necessary to fully recover, but not exceed, all reasonable administrative and implementation costs to the department of the retrieval program.

(2) Notwithstanding Chapter 4 (commencing with Section 2080) of Title 6 of Part 4 of Division 3 of the Civil Code or any other law, any Dungeness crab trap retrieved under the authority of a retrieval permit shall become the property of the retrieval permitholder.

(3) The department shall require a retrieval permitholder to notify the former trap owner of the retrieval of a Dungeness crab trap and to offer to sell the trap to the former owner for a reasonable recovery fee, as determined by the retrieval permitholder, based on the cost of trap retrieval and storage of the trap. The department shall impose per-trap fees on any former trap owner who refuses to pay the recovery fee to the retrieval permitholder. The department shall set the rate of these per-trap fees at a level sufficient to recover any costs to the department from handling noncompliance with the gear retrieval program and to reimburse the retrieval permitholder for the reasonable cost of trap retrieval, storage, and disposal of crab traps belonging to a former owner who refuses to pay the recovery fees for those traps and, upon appropriation by the Legislature, shall use the proceeds of the per-trap fees for these purposes. The department shall annually adjust the per-trap fees pursuant to Section 713.

(4) Notwithstanding Section 8022, the department may release contact information to a retrieval permitholder for purposes of the retrieval program

under terms and conditions as the department deems necessary to preserve the confidentiality of the information released. Any release of information pursuant to this section does not constitute a waiver of any applicable exemptions from disclosure under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(5) The department may deny an application for renewal or transfer of a Dungeness crab vessel permit until the applicant pays any fees imposed pursuant to paragraph (3).

(6) The department shall submit the proposed retrieval program developed pursuant to this section to the Dungeness crab task force for review, and shall not implement the retrieval program until the task force has had 60 days or more to review the proposed retrieval program and recommend any proposed changes. The director may implement the retrieval program earlier than 60 days after it is submitted to the Dungeness crab task force for review, if recommended by the task force.

(c) This section shall become inoperative on April 1, 2029, and, as of January 1, 2030, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2030, deletes or extends the dates on which it becomes inoperative and is repealed.

§ 9004. Maximum intervals for servicing traps; Abandoned traps

Every trap shall be raised, cleaned, serviced, and emptied at intervals, not to exceed 96 hours, weather conditions at sea permitting, and no trap shall be abandoned in the waters of this state.

§ 9005. Trap buoys

Every trap or string of traps shall be marked with a buoy. The department shall implement regulations by January 1, 2020, requiring standardized gear marking for those fisheries in which the department determines it is appropriate. As part of the regulations, the department shall establish a fee for each fishery requiring standardized gear marking pursuant to this section and shall set and adjust each fee in an amount to fully recover, but not exceed, all reasonable administrative and implementation costs of the department relating to the standardized gear marking requirement.

§ 9006. Marking of traps used to take finfish or crustaceans with buoy; Identification numbers

Every trap used to take finfish or crustaceans shall be marked with a buoy. Each buoy shall be marked to identify the operator as follows:

(a) For a trap used to take lobster the commercial fishing license identification number followed by the letter "P."

(b) For a trap used to take Dungeness crab or hagfish, the commercial fishing license identification number only.

(c) For a trap used to take finfish other than sablefish or hagfish, the commercial fishing license identification number followed by the letter "Z."

(d) For a trap used to take sablefish, the commercial fishing license identification number followed by the letter "B."

§ 9012. Use of vessel to take and land crab for both commercial and sport purposes

(a) No vessel may be used to take and land crab for both commercial and sport purposes in the same day.

(b) In Districts 6, 7, 8, and 9, no trap shall be used to take Dungeness crab if that trap is attached to another trap or other traps by a common line.

Regulatory Sections: California Code of Regulations, Title 14

§ 29.85. Crabs.

(a) Any individual who fishes for crabs using crab trap(s) pursuant to subsection 29.80(c), shall have in possession a valid Recreational Crab Trap Validation (Section 701, Title 14, CCR).

(b) Dungeness crabs (*Cancer magister*):

(1) Dungeness crab may not be taken from or possessed if taken from San Francisco Bay and San Pablo Bay, plus all their tidal bays, sloughs and estuaries between the Golden Gate Bridge and Carquinez Bridge.

(2) Open season: Fishing rules for Dungeness crab may be changed during the year or in-season by the director under the authority of subsection 29.80(c)(7). See subsection 29.80(c)(7). for additional information.

(A) Del Norte, Humboldt and Mendocino counties: From the first Saturday in November through July 30.

(B) All other counties: From the first Saturday in November through June 30.

(3) Limit: Ten.

(4) No vessel that takes Dungeness crabs under authority of this section, or Section 29.80, shall be used to take Dungeness crabs for commercial purposes.

(5) Minimum size: Five and three-quarter inches measured by the shortest distance through the body from edge of shell to edge of shell directly in front of and excluding the points (lateral spines).

(c) All crabs of the *Cancer* genus except Dungeness crabs, but including: yellow crabs, rock crabs, red crabs and slender crabs:

(1) Open season: All year. Fishing rules for crabs of the *Cancer* genus may be changed during the year or in-season by the director under the authority of subsection 29.80(c)(7). See subsection 29.80(c)(7). for additional information.

(2) Limit: Thirty-five.

(3) Minimum size: Four inches measured by the shortest distance through the body, from edge of shell to edge of shell at the widest part, except there is no minimum size in Fish and Game districts 8 and 9.

(d) All crabs of the genus *Cancer*, including Dungeness crabs, yellow crabs, rock crabs, red crabs and slender crabs, may be brought to the surface of the water for measuring, but no undersize crabs may be placed in any type of receiver, kept on the person or retained in any person's possession or under his direct

control; all crabs shall be measured immediately and any undersize crabs shall be released immediately into the water.

(e) Sand crabs (*Emerita analoga*): Limit: Fifty.

§ 91. Marine Fisheries: Experimental Fishing Permit Program

(a) Purpose and scope. This section implements the Experimental Fishing Permit (EFP) Program pursuant to Section 1022 of the Fish and Game Code. The commission may authorize the department to issue an EFP for commercial or recreational marine fishing activities otherwise prohibited by the Fish and Game Code or any regulation adopted pursuant thereto for authorized activities.

(b) Definitions. Definitions contained in subdivision (h) of Section 1022 of the Fish and Game Code for "compensation fishing," "conservation engineering," and "exploratory fishing" apply. In addition, for purposes of this section, the following definitions apply:

(1) Accepted application: An EFP application packet accepted by the department as complete and eligible for further consideration by the commission.

(2) Applicant: The individual or entity applying for the EFP who, upon approval by the commission, becomes the EFP holder.

(3) Authorized activities: Activities approved under the EFP for one or any combination of the following purposes: research, education, limited testing, data collection, compensation fishing, conservation engineering, or exploratory fishing.

(4) Authorized agent: An individual who may conduct authorized activities and serve in place of the EFP holder for all activities requiring the presence or action of the EFP holder and who is named on form DFW 1103, Marine Fisheries: Experimental Fishing Permit Terms and Conditions (see subsection 704(b)(2) of these regulations), if applicable.

(5) EFP holder: The individual or entity to whom an EFP is issued.

(6) Entity: A corporation, firm, partnership, association, institution or affiliation, Native American tribe, or a local, state, or federal agency.

(7) Entity administrator: An individual designated by an entity who shall oversee all activities conducted under the permit on the entity's behalf and serve as the primary point of contact for department inquiries for the EFP. Both the entity and entity administrator shall be liable for any violations of this section or any authorizations, terms, or conditions of the EFP.

(8) Interested persons: Every person who has informed the commission in writing of their interest and has provided their mailing address or email address to be notified of any accepted applications.

(9) Key participants: Project participants including the applicant, and if applicable, the entity administrator and any authorized agents.

(10) Project: The experimental fishing project for which an EFP is needed.

(c) Application procedures and application fee. Each EFP application must be submitted to the department pursuant to the provisions in this subsection.

(1) Pre-application consultation. Prior to applying for the EFP, a prospective applicant must consult with the department's marine region for consideration of any request for assistance from the department pursuant to subsection (c)(2)(C) or a permit fee reduction option pursuant to subsection (m)(3). Pre-application consultation is encouraged but not required for all other EFP proposals. Requests for consultation must be submitted in writing to the appropriate point of contact listed on the department's EFP web page: <https://wildlife.ca.gov/Conservation/Marine/EFP>.

(2) An application packet. An applicant shall submit a written application packet, either electronically to the email address, or by delivery to the mailing address listed on the department's EFP web page (<https://wildlife.ca.gov/Conservation/Marine/EFP>) and pay the non-refundable application fee as specified in subsection 704(b)(1) of these regulations. To be complete, the application packet must contain the following elements:

(A) Contact information for key participants. Contact information must include the name, title, affiliation, mailing address, email address, telephone number, and the Automated License Data System Get Outdoors ID (GO ID) or commercial fishing license (CFL) number for all key participants.

1. If any key participant does not have a GO ID or CFL number, they must provide the following information: their true name, residence address, date of birth, height, color of eyes, color of hair, weight, gender, telephone number, email address, and a form of identification as listed in subsection 700.4(c) of these regulations.

2. If the applicant is an entity, the contact information should be that of the entity administrator.

(B) A statement of purpose, including:

1. A description of the purpose and goals of the proposed project, including how the project meets or is consistent with the policies in Section 7050 of the Fish and Game Code.

2. A list of project activities that are prohibited under current Fish and Game Code or state fishing regulations, and the reasons to justify the authorization of those activities.

(C) A statement of qualifications demonstrating the ability of the key participants to perform the duties and responsibilities listed in this subsection. If the applicant does not have the capability to directly perform or oversee the performance of the following duties and responsibilities, the applicant may request assistance from the department pursuant to subsection (c)(1).

1. Lead and provide supervisory oversight for all activities of the permit under the authorizations, standard terms pursuant to subsection (h), and special conditions pursuant to subsection (i).

2. Experience in identification, methods, and protocols specific to the requested taxa under subsection (c)(2)(E).

3. Obtain all appropriate authorizations and oversee quality control measures to assure conformance to the specified standards or requirements.

4. Train all persons operating under the permit.

5. Coordinate field activities and communicate field findings with the department's marine region.

6. Collect, analyze, and transmit data gathered under the EFP to the department's marine region.

(D) The specific permit tier (see subsection (m)(2)) for which the applicant is applying and what consultation, if any, has occurred with the department regarding the proposed project, including the name and contact information of the department staff with whom the applicant has consulted in accordance with subsection (c)(1).

(E) The project description, including:

1. A description of the experimental design and research plan, including the methodology of the project with specific procedures for data collection, storage, processing, and analysis; and a timeline for implementing the project, including, if applicable, the time period during which compensation fishing is expected to occur.

2. A list of target species expected to be harvested as samples or for compensation under the EFP, including anticipated amounts (weight or number) and disposition of target species taken (retained, sold, or other (e.g., tagged and released)).

3. A list of species expected to be taken incidental to fishing conducted under the EFP, including anticipated amounts (weight or number), disposition of incidental species taken (retained, sold, discarded, or other (e.g., tagged and released)), and a description of any measures that will be used to reduce incidental catch mortality.
4. A description of the mechanisms to ensure that the proposed catch limit (weight or number) for target and incidental species are not exceeded and are accurately tracked or monitored (e.g., at sea fisheries observers, electronic monitoring, or other reporting method), if any; and, if applicable, a description of the vessel's capacity to accommodate an onboard observer.
5. A description of any potential impacts on existing fisheries, habitat, or possible incidental interactions with threatened, endangered, or protected species (e.g., sea turtles, marine mammals, and birds) that could occur as a result of the project.
6. The type and amount of gear to be used, including gear specifications and design, and, if applicable, a description of any bycatch reduction devices that will be used. If the project involves gear modifications or other gear innovations, the description must include the means by which department staff can locate, retrieve, and inspect the proposed gear.
7. The location and timing of the project. The description must include trip specifications, such as fishing depth, anticipated number of trips, expected trip duration, and estimated number of hauls and average soak time (for fixed gear) or estimated number of tows/sets to be made per day, and estimated duration and speed per tow (for mobile gear). For vessels listed under subsection (c)(2)(F), the description must also identify any fishing activity that is expected to occur on the same trip as the project for purposes other than those provided by the EFP.

(F) Project vessels to be authorized by the EFP (if applicable), including:

1. Vessel name.
2. Names, addresses, and telephone numbers of vessel owners, and any vessel operators.
3. For any vessel that will be used in commercial fishing activity related to the permit, the commercial boat registration number issued pursuant to Section 7881 of the Fish and Game Code.
4. For any vessel that will not be used in commercial fishing activity related to the permit, the commercial boat registration number issued pursuant to Section 7881 of the Fish and Game Code or a copy of the United States Coast Guard Certificate of Documentation. If there is no commercial boat

registration number or Certificate of Documentation for the vessel, a copy of the vessel's state registration is required.

(G) Signature: The date of the application and the signature of the applicant.

(d) Department review of an EFP application.

(1) Following the receipt of an application, the department shall accept or reject an application and provide notification of such determination within 30 days from the date the application fee payment clears.

(A) Rejection of an application by the department.

1. The department shall reject the application as incomplete if it fails to contain the information required under subsection (c)(2).

2. The department may reject an application if any key participant has failed to comply with the terms or conditions of a state or federal fishing license or permit, has violated any provision of the Fish and Game Code or regulations adopted thereto or any applicable federal or state law regulating fishing activities, has had a fishing license or permit suspended or revoked, or has been convicted of a crime of moral turpitude.

3. If an application is rejected, the department shall provide written notification to the applicant with an explanation for the rejection.

4. Amended application. Within 10 working days of department notification of an application rejection, the applicant may submit an amended application packet that corrects deficiencies outlined in the notice of rejection under the original application fee.

5. Within 30 days of receiving an amended application, the department shall notify the applicant of its final determination in accordance with the provisions of subsections (d)(1)(A)3. or (d)(1)(B).

(B) Acceptance of an application by the department. The department shall accept an application if it is not rejected under subsection (d)(1)(A). The department shall notify the applicant that the application has been accepted and transmit the accepted application to the commission.

(2) Department technical review and recommendation. Within 60 days after an accepted application is transmitted to the commission, the department shall develop and transmit to the commission a recommendation, including any permit special conditions. In developing its recommendation, the department shall consider the information provided pursuant to subsection (c)(2) and may request of the applicant any additional information it deems necessary to evaluate the project for purposes of developing permit special

conditions and shall report any failure to comply with such requests to the commission.

(3) Time extension for department review. During its review of an EFP application, the department may extend any of the time limits specified in subsection (d). The department shall provide written notification of the time extension under subsection (d)(1) to the applicant, and under subsection (d)(2) to the commission and the applicant. The written notification shall include an explanation of the reason additional time is required.

(e) Public notice of and comment on an EFP application.

(1) Notice of receipt of an accepted EFP application. Within 5 working days of receipt of an accepted application, the commission shall send notice to interested persons pursuant to subsection (e)(3), including a summary of the proposed project, species involved, and opportunities for public comment.

(2) Notice of receipt of department recommendation. At least 30 days prior to taking action on an accepted application, the commission shall send notice to interested persons pursuant to subsection (e)(3), and post on its website information concerning accepted EFP applications that include:

(A) Public notices related to the EFP application and the department recommendation.

(B) The application.

(C) Department recommendation, including any permit special conditions.

(3) Direct notification to interested persons.

(A) The commission shall mail or email the notice to interested persons.

(B) The commission may mail or email the notice to any person or group of persons whom the commission believes to be interested.

(f) Commission action on an EFP application.

(1) At its next available meeting, but not sooner than 30 days after public notice is given pursuant to subsection (e)(2), the commission shall schedule the application and any proposed permit special conditions for consideration.

(2) The commission may approve or deny the application and/or any permit special conditions.

(A) If the commission approves the application, the department shall issue the permit pursuant to subsection (g).

(B) The commission shall deny an application if it determines any of the following applies:

1. Key participants failed to disclose material information or provided false, misleading, or inaccurate statements as to any material fact in connection with the application.
2. Based on the best scientific information available, alone or in combination with other approved EFPs, the project would have a detrimental effect on any fish stock, marine mammal, or species designated as threatened, endangered, or fully protected; or have an adverse impact on any resource or resource allocation, established fisheries, or marine habitat.
3. The project is inconsistent with this section, Section 1022 or Section 7050 of the Fish and Game Code, any applicable fishery management plan, or other applicable law for which an exemption is not sought.

(C) If an application is denied, the commission shall notify the applicant in writing of the reasons for denial and the decision thereon within 60 days of the denial.

(g) Department issuance of an EFP.

(1) Upon approval of an application by the commission, the department shall send to the applicant for signature a completed form DFW 1103, including any commission-approved special conditions placed on the permit pursuant to subsection (f)(2).

(2) The EFP shall be issued upon department receipt of payment of the applicable EFP fees and a copy of form DFW 1103 signed and dated by the applicant.

(h) Permit standard terms. Standard terms of the EFP are set forth on form DFW 1103.

(i) Permit special conditions.

(1) Special conditions of the EFP are specified on form DFW 1103.

(2) Special conditions placed on a permit as necessary for research purposes or the conservation and management of marine resources and the environment may include:

(A) The maximum amount and size of each species that can be caught, harvested and/or landed during the term of the project, including bag/trip limit, annual harvest limit, or other restrictions placed on take.

- (B) The timing of the authorized activities, and the geographic location where such activity may occur.
- (C) A citation of current fishing laws and regulations from which the authorized activities are exempted.
- (D) The type, size, and amount of gear that can be used by each person or vessel operating under the EFP, and any other restrictions placed on the gear.
- (E) The number, size, name, and identification number of the vessels and/or names and addresses of authorized agents covered under the EFP, and identification of any additional fishing permits or licenses that are required to conduct the authorized activities.
- (F) The method for marking or identifying gear or vessels operating under the EFP.
- (G) The procedures and/or type of equipment to be used to monitor and track the authorized activities, collect data, or provide for personnel safety.
- (H) Data reporting requirements for the authorized activities, including the method, format, content, and timeframe for submittal of the required information to the department.
- (I) Other conditions necessary to ensure compliance with Section 1022 of the Fish and Game Code and the regulations provided in this section.
- (j) It is unlawful to operate under an EFP in violation of the permit standard terms and special conditions as set forth on form DFW 1103.
- (k) Permit updates and amendments.
 - (1) Department authorized amendments. At any time during the term of the permit, the department may amend the special conditions set forth on form DFW 1103 as it deems necessary for research purposes or the conservation and management of marine resources and the environment.
 - (A) Amendments to the special conditions shall not exceed the allowances placed on the permit by the commission pursuant to subsection (i) concerning:
 1. the amount and type of species that may be taken,
 2. the geographic location where fishing may occur,
 3. the amount or type of gear that can be used, and

4. the number of vessels or persons that may conduct the authorized activities.

(B) Upon amending the special conditions of the EFP, the department shall provide written notification to the commission and EFP holder, including the reasons for the amendments, and the EFP holder's right to request that the department review and reconsider the department's amended conditions pursuant to subsection (p).

(C) The department may suspend the EFP if the EFP holder fails to return a signed and dated copy of an amended form DFW 1103 within 10 days following date of the written notice.

(2) EFP holder requested amendments. At any time during the term of the permit, EFP holders may request amendments to their EFP by submitting a written request, either electronically or by delivery to the mailing address listed on the department's EFP web page (<https://wildlife.ca.gov/Conservation/Marine/EFP>) and paying the applicable non-refundable amendment fee as specified in subsection 704(c) of these regulations. The written request must include a description of the proposed changes and the reasons for the changes.

(A) Types of EFP holder requested amendments.

1. Administrative updates. Updates to contact, affiliation, or vessel information are administrative changes that may be approved and made by the department and do not require payment of a fee.

2. Minor amendments. Amendments to the EFP that are subject to the limitations described in subsection (k)(1)(A) which may be approved and made by the department.

3. Major amendments. Amendments to the EFP that exceed the allowances placed on the permit concerning subsection (k)(1)(A), and are subject to the same department review, public notice, and commission action, and department issuance procedures specified in subsections (d)(2) through (g).

(B) If a request for administrative update or minor amendment is rejected, the department shall provide written notification to the EFP holder with an explanation for the rejection and the EFP holder's right to file a request for reconsideration pursuant to subsection (p).

(3) Approved amendments do not change or extend the expiration date of the original permit.

(I) Reports.

- (1) The EFP holder shall submit an annual report to the department by the date specified in the permit special conditions summarizing the authorized activities carried out during the reporting period. The annual report must describe the activities conducted and results, including a summary of any impediments encountered or deviations that occurred.
- (2) Within 60 days after the permit expiration date, the EFP holder shall submit to the department a final report and any scientific reports or other documents created as a result of the authorized activities. The final report must provide:
 - (A) A summary describing the original purpose and activities completed under the EFP.
 - (B) A discussion of results and findings of the EFP project, including any conclusions on the effectiveness of the authorized activities in achieving the goals of the project, and recommendations for improving fisheries management or expanding commercial or recreational opportunities.
 - (C) Any additional information as required by the special conditions of the EFP.
 - (D) A list of all key participants who participated, in whole or in part, including a description of their contribution to the project.

(m) Permit tier structure and fees.

- (1) Initial permit issuance fee. Except as provided for in subsection (m)(3), the department shall charge a non-refundable fee for the initial issuance of an EFP, as specified in subsection 704(b)(3) of these regulations.
- (2) Annual permit fee. Except as provided in subsection (m)(3), the EFP holder shall pay a non-refundable annual permit fee as specified in subsection 704(b)(4) of these regulations for the EFP based on the designated permit tier.
 - (A) Tier 1. EFP for the purpose identified under subsection (b)(3) except for exploratory fishing.
 - (B) Tier 2. EFP for the purpose identified under subsection (b)(3) except for exploratory fishing and facilitated by the department pursuant to subsection (c)(2)(C).
 - (C) Tier 3. EFP for the purpose of exploratory fishing.
 - (D) Tier 4. EFP for the purpose of exploratory fishing and facilitated by the department pursuant to subsection (c)(2)(C).

(3) Permit fee reduction option. A 50 percent reduction in the initial permit issuance fee listed in subsection 704(b)(3) and annual permit fee listed in subsection 704(b)(4) of these regulations may be considered and approved

as a special condition by the commission at the time of approval of the EFP on a case-by-case basis, as recommended by the department.

(A) The department may identify projects for the permit fee reduction as it deems necessary to address a specific fishery management need or priority in any of the following categories:

1. Innovative fishing gear and techniques to reduce incidental capture of non-target species, habitat impacts, and/or interactions with protected species.
2. Data collection to fill essential fishery information gaps or monitoring needs for fisheries and associated habitat.
3. New data or methods to quantify catch and effort and/or standardize data reporting for recreational or commercial fisheries.
4. Other areas of research that may be necessary for the purpose of fishery management pursuant to Section 7050 of the Fish and Game Code.

(B) Pre-application consultation is required pursuant to subsection (c)(1).

(n) Term of permit and renewal. Permits are valid for one year and may be renewed annually by the department up to three times provided all of the following requirements are met:

- (1) The EFP holder shall submit a written request to the email or mailing address listed on the department's EFP web page (<https://wildlife.ca.gov/Conservation/Marine/EFP>) to renew the EFP at least 60 days prior to the expiration date of the current permit.
- (2) Upon review and determination by the department that all key participants have complied with the requirements, terms, and conditions of this section and form DFW 1103 to be eligible for a permit renewal.
- (3) Payment of the designated annual permit fee pursuant to subsection (m)(2) must be received by the department's license and revenue branch on or before the annual expiration date of the EFP.

(o) Permit revocation, suspension, cancellation, or non-renewal.

- (1) An EFP holder may submit a written request for cancellation to the department's license and revenue branch.
- (2) The EFP shall be subject to revocation, suspension, cancellation, or non-renewal by the department for any of the following reasons:
 - (A) Failure to comply with the authorizations, conditions, or terms of the permit.

(B) Failure to comply with any provision of the Fish and Game Code or regulations adopted pursuant thereto that are not otherwise exempted by the permit; violation of any federal statute, regulation, or rule that is related to a regulated fishing activity; or conviction of a crime of moral turpitude.

(C) Reasons listed subdivision 1022(a)(2) of the Fish and Game Code.

(D) A change in the Fish and Game Code or regulations adopted pursuant thereto, or to any federal statute, regulation, or rule that prohibits the continuation of the authorized activities.

(E) Submittal of false information for the purposes of obtaining or renewing a permit.

(F) The purpose of the project has been achieved or the EFP produces information at a level deemed by the department sufficient to support a management action.

(G) Failure to pay the designated annual permit fee pursuant to subsection (n)(3).

(3) The department shall provide written notification to the EFP holder of any action to revoke, suspend, cancel, or deny renewal of an EFP. The notice must include: the name of the EFP holder, the EFP identification number, the reason for the revocation, suspension, cancellation, or renewal denial, a description of any actions necessary for the EFP holder to correct any deficiencies (if applicable), and the EFP holder's right to request reconsideration by the department.

(4) An EFP holder whose permit has been suspended or revoked shall turn over all records produced under the terms and conditions of the EFP pursuant to department's direction. If applicable, an EFP holder whose permit has been revoked, suspended, or cancelled or whose permit renewal has been denied shall turn over all department owned equipment including, but not limited to, fishing gear, electronic monitoring equipment, storage devices, trap tags, etc. Failure to return department owned equipment by a permittee as described in this subsection shall be unlawful.

(p) Reconsideration. A person or entity who receives a notice of revocation, suspension, cancellation, or modification of their permit from the department, or a notice that their permit renewal has been denied or permit amendment has been rejected by the department, may submit a written request for reconsideration to the department no later than 30 days following the date of the notification, and shall state the reasons for the requested reconsideration. The department shall consider any information submitted with the request, and it may reverse or amend its decision.

§ 122.1. Lobster Buoys and Trap Tags

- (a) All lobster traps and receivers impounding lobsters shall be individually buoyed. The buoys must be on the surface of the water, except after the first Tuesday in October when buoys may be submerged by means of metallic timing devices with a timed delay (commonly called "pop-ups") that does not exceed the trap service interval requirement as specified in subsection 122.2(d) of these regulations.
- (b) Each buoy marking any lobster trap shall comply with marking requirements set forth in Section 180.5 of these regulations.
- (c) Deployed lobster traps and those possessed by a lobster operator permit holder aboard a vessel shall have a valid department-issued trap tag directly attached to the trap. If the information on the trap tag is illegible or incorrect or if the trap tag is missing from the trap for any reason, the trap shall be considered not in compliance, and shall not be used to take spiny lobster for commercial purposes.
 - (1) Lobster trap tags. A lobster operator permit holder shall be issued 300 trap tags for use during that season for each valid lobster operator permit in possession.
 - (2) Replacement procedures for catastrophic loss of trap tags.
 - (A) A lobster operator permit holder shall only be eligible to receive replacement trap tags for trap tags lost due to catastrophic loss.
 - (B) Catastrophic trap tag loss is defined as the cumulative loss of 75 or more trap tags for each valid lobster operator permit due to events beyond the lobster operator permit holder's control, such as weather, force majeure and acts of God.
 - (C) The lobster operator permit holder shall submit to the department's License and Revenue Branch the affidavit signed under penalty of perjury by the lobster operator permit holder and nonrefundable fee for each replacement tag as specified in Section 705 of these regulations.
 - (D) An affidavit for trap tag replacement due to catastrophic loss, with a description of the factual circumstances consistent with subsection (B) above, shall be approved by the department prior to any replacement trap tags being issued.
 - (E) Any trap tag reported as lost and subsequently recovered during the season is invalid and shall be immediately returned to the department's License and Revenue Branch.

§ 132.1. Dungeness Crab Trap Tags, Biennial Buoy Tags, and Trap and Buoy Tag Allocations

(a) Dungeness Crab Trap Tags. Every Dungeness crab trap aboard a permitted Dungeness crab vessel and fished in California waters shall have a valid tag attached to the Dungeness crab trap.

(1) Dungeness crab trap tags shall be supplied by the owner of the Dungeness crab trap and shall contain the trap owner's telephone number.

(2) A Dungeness crab trap tag is required on Dungeness crab traps onboard a permitted Dungeness crab vessel.

(3) If the information on the tag is illegible or incorrect, or if the tag is missing from the Dungeness crab trap for any reason, the trap shall be considered not in compliance, and shall not be used to take Dungeness crab for commercial purposes.

(b) Dungeness Crab Biennial Buoy Tags. As required by Section 9005 of the Fish and Game Code, every Dungeness crab trap placed in waters of the state to take Dungeness crab for commercial purposes shall be marked with a buoy. Each Dungeness crab trap on board or fished from a permitted Dungeness crab vessel is required to have a biennial buoy tag affixed to the main buoy, known hereafter as buoy tag, pursuant to the provisions of Section 8276.5(a)(1)(D) of the Fish and Game Code. The buoy tag shall contain the department-assigned Dungeness crab vessel permit number and trap tier number. All of the buoy tags allocated to each Dungeness crab vessel permit as described in this Section and Section 8276.5(a)(1) of the Fish and Game Code shall be purchased by the permitholder biennially at the same time a Dungeness crab vessel permit is purchased or the permit shall be void pursuant to Section 8276.5(a)(3)(A) of the Fish and Game Code. The nonrefundable fee for each buoy tag is \$5.00.

(1) Buoy tags shall not be leased and shall be transferred to another person only as part of a transaction authorized under Section 8280.3 of the Fish and Game Code.

(2) A Dungeness crab trap used in compliance with this section shall only be used for the commercial take of Dungeness crab.

(A) Any person with a valid northern or southern rock crab permit aboard a permitted Dungeness crab vessel shall not fish with rock crab traps 30 days prior to the pre-soak period prescribed in Section 8283 of the Fish and Game Code or commercial Dungeness crab season opener, whichever comes first.

(B) Notwithstanding Section 9012 of the Fish and Game Code, vessels with both a valid commercial passenger fishing vessel license and a valid Dungeness crab vessel permit may only fish for Dungeness crab during the commercial Dungeness crab season. In Districts 6 and 7, after the close of the commercial Dungeness crab season, vessels with both a valid

commercial passenger fishing vessel license and a valid Dungeness crab vessel permit may fish only under the provisions of their commercial passenger fishing vessel license until the close of the recreational season.

(c) Dungeness Crab Trap Buoy Tag Allocations.

(1) Pursuant to Section 8276.5(a)(1) of the Fish and Game Code, the Dungeness crab trap limit program shall contain seven tiers of Dungeness crab trap limits based on California landings. Landings shall be documented by fish landing receipts submitted to the department in the vessel's name and identification number pursuant to Section 8046 of the Fish and Game Code under valid California Dungeness crab vessel permits between November 15, 2003, and July 15, 2008, inclusive, as follows:

(A) Tier 1 shall be the 55 California permits with the highest California landings of Dungeness crab made with trap gear, and each permitholder shall receive a maximum allocation of 500 buoy tags.

(B) Tier 2 shall be the 55 California permits with the next highest California landings of Dungeness crab made with trap gear to those in subdivision (A), and each permitholder shall receive a maximum allocation of 450 buoy tags.

(C) Tier 3 shall be the 55 California permits with the next highest California landings of Dungeness crab made with trap gear to those in subdivision (B), and each permitholder shall receive a maximum allocation of 400 buoy tags.

(D) Tier 4 shall be the 55 California permits with the next highest California landings of Dungeness crab made with trap gear to those in subdivision (C), and each permitholder shall receive a maximum allocation of 350 buoy tags.

(E) Tier 5 shall be the 55 California permits with the next highest California landings of Dungeness crab made with trap gear to those in subdivision (D), and each permitholder shall receive a maximum allocation of 300 buoy tags.

(F) Tier 6 shall be the remaining California permits with the next highest California landings of Dungeness crab made with trap gear to those in subdivision (E), which are not described in paragraph (1) or (2) of subdivision (g) of Section 8276.4 of the Fish and Game Code, and each permitholder shall receive a maximum allocation of 250 buoy tags.

(G) Tier 7 shall be the California permits described in paragraphs (1) and (2) of subdivision (g) of Section 8276.4 of the Fish and Game Code, and each permitholder shall receive a maximum allocation of 175 buoy tags. Tags in this tier shall not be transferable for the first two years of the program pursuant to Section 8276.5(a)(1)(G) of the Fish and Game Code.

(2) The original trap and buoy tag allocation and any modification to this allocation as a result of the appeal process shall remain in effect for the duration of the Dungeness crab trap limit program.

(3) A permitted Dungeness crab vessel shall not fish more Dungeness crab traps than the number of traps and buoy tags allocated to the Dungeness crab vessel permit pursuant to subdivisions (A)-(G) above and Section 8276.5(a)(1) of the Fish and Game Code.

§ 132.2. Retrieval of Commercial Dungeness Crab Traps

(a) Permitted Dungeness crab vessels shall not possess, use, control, or operate any commercial Dungeness crab trap without a buoy tag assigned to that vessel except:

(1) To set gear as allowed under Section 8280.7 of the Fish and Game Code; or

(2) To retrieve from the ocean and transport to shore another permitted Dungeness crab vessel's commercial Dungeness crab trap that is lost, damaged, abandoned, or otherwise derelict, provided that:

(A) No more than six (6) derelict commercial Dungeness crab traps may be retrieved per fishing trip.

(B) The retrieving vessel shall return to the ocean waters immediately any crab found in a retrieved commercial Dungeness crab trap.

(C) Immediately upon retrieval of a commercial Dungeness crab trap the retrieving vessel operator shall document in the retrieving vessel's log the date and time of the trap retrieval, number of retrieved Dungeness crab traps, the location of the retrieval, and any tag information or buoy markings present on the retrieved trap.

(D) Any retrieved commercial Dungeness crab trap shall be transported to shore during the same fishing trip that retrieval took place.

(E) Notwithstanding subsection (a)(2)(A), from July 16 through October 31, an unlimited number of commercial Dungeness crab traps may be retrieved per fishing trip and transported to shore during the same fishing trip.

(b) Waiver

(1) Any vessel may retrieve to shore commercial Dungeness crab traps without a buoy tag assigned to that vessel if;

(A) The holder of the Dungeness crab vessel permit to which the traps are assigned cannot retrieve the traps because the permitted vessel is incapacitated due to a major mechanical failure or destroyed due to fire,

capsizing, or sinking, or due to undue hardship resulting from circumstances beyond the control of the permit holder.

(B) The permit holder makes a request for a waiver in writing to the department's License and Revenue Branch.

(C) The department approves the waiver request.

(2) A copy of the waiver approved by the department shall be on board the retrieving vessel.

(3) The waiver may include conditions such as time restrictions, landing prohibitions, or any other conditions the department deems necessary.

(c) Notwithstanding this section, any vessel may retrieve lost or abandoned gear under Section 132.7 of these regulations.

§ 132.4. Replacement Procedures for Lost Dungeness Crab Buoy Tags

Dungeness crab buoy tags shall be replaced under the following conditions:

(a) In-Season Replacement Buoy Tags

(1) Starting 30 days after the season opener in the California management area where the Dungeness crab permitholder began the Dungeness crab season, a maximum number of replacement buoy tags may be issued as follows:

Tier	Buoy Tag Allocation	Maximum Replacement Buoy Tags
1	500	50
2	450	45
3	400	40
4	350	35
5	300	30
6	250	25
7	175	18

(2) The permitholder shall submit an In-Season Replacement Dungeness Crab Buoy Tag Affidavit (FG1303, rev. 1/13), signed under penalty of perjury by the Dungeness crab permitholder, to the department's License and Revenue Branch. The affidavit shall include:

- (A) The number of replacement buoy tags requested; and
- (B) Payment of the nonrefundable replacement tag fee for each in-season replacement buoy tag. The fee for each tag shall be \$1.00.

(b) Between-Season Replacement Buoy Tags

(1) Before the start of the next season all in-season replacement buoy tags shall be returned to the department's License and Revenue Branch. All lost buoy tags may be replaced with new buoy tags. The permitholder shall submit a Between-season Replacement Dungeness Crab Buoy Tag Affidavit (FG1302, rev. 1/13), signed under penalty of perjury by the Dungeness crab permitholder, to the department's License and Revenue Branch on or before August 15th each year. Replacement tags shall not be issued unless the in-season replacement tags have been returned to the department. The affidavit shall include:

- (A) A statement confirming that the originally-issued buoy tags cannot be recovered;
- (B) A statement describing the factual circumstances surrounding the loss of the buoy tags;
- (C) The location and date where lost buoy tags were last observed;
- (D) The quantity of buoy tags to be replaced;
- (E) The tag number of each lost buoy tag to be replaced; and
- (F) Payment of the nonrefundable fee for each buoy tag. The fee for each tag shall be \$1.00.
- (G) Any lost buoy tags that are recovered shall be invalid and not used for the remainder of the season.

(2) Based on the information provided in the written affidavit, the department shall only issue the number of replacement buoy tags that were reported as lost.

(c) Catastrophic Loss

- (1) The department may waive the replacement fee and the limit on the maximum allocation of in-season replacement buoy tags when the buoy tags are lost or destroyed due to circumstances beyond the control of the permitholder.
- (2) The permitholder shall submit a written request, signed under penalty of perjury by the permitholder, to the department's License and Revenue Branch. The statement shall include the following information:

- (A) A description of the factual circumstances surrounding the loss of the buoy tags.
- (B) A statement confirming that the originally-issued buoy tags cannot be recovered.
- (C) The location and date where lost buoy tags were last observed.
- (D) Documentation including, but not limited to, a report filed by the US Coast Guard, a law enforcement agency, an insurance company, or other written documentation to substantiate the loss or destruction of the buoy tags.

§ 132.6. Dungeness Crab Trap Surface Gear Limitations and Gear Removal Time

(a) Pursuant to Sections 8276.5 and 9005 of the Fish and Game Code, every trap or string of traps shall be marked with a buoy, known hereafter as the main buoy, and such buoy shall be tagged with a Dungeness crab biennial buoy tag. Any additional surface buoys attached after the main buoy shall be limited to the following:

- (1) No more than two trailer buoys.
- (2) One end marker buoy that shall not extend more than three feet in length behind the last trailer buoy.

(b) End marker buoys shall be less than five inches in diameter and are not considered trailer buoys.

(c) The distance between the front end of the main buoy to the tail end of the last trailer buoy shall not exceed:

- (1) A maximum of 24 feet when the trap is deployed at depths equal to or less than 210 feet (35 fathoms).
- (2) A maximum of 36 feet when the trap is deployed at depths greater than 210 feet (35 fathoms).

(d) It is unlawful to leave any Dungeness crab buoys, lines, or traps in state waters after the end of the Dungeness crab fishing season. All Dungeness crab traps shall be removed from state waters by 11:59 pm on the last day of the season as set forth in sections 8276 and 8277 of the Fish and Game Code.

§ 132.7. Lost or Abandoned Dungeness Crab Trap Gear Retrieval Program

(a) Commercial Dungeness crab trap gear left in the ocean after the close of the commercial Dungeness crab season is declared to be lost or abandoned and subject to retrieval under the terms of this Section.

(b) Lost or Abandoned Dungeness Crab Trap Gear Retrieval Permit Required. Pursuant to Section 9002.5 of the Fish and Game Code, the department may grant a Lost or Abandoned Commercial Dungeness Crab Trap Gear Retrieval Permit ("Retrieval Permit") to aid in the retrieval of lost or abandoned traps after the close of the commercial Dungeness crab season under the requirements of the Trap Gear Retrieval Program set forth herein. For the purposes of this Section, trap gear is defined as the trap and any attached lines or buoys. Retrieval Permits shall expire each year on December 31st.

(c) Retrieval Permit Application. Lost or Abandoned Commercial Dungeness Crab Trap Gear Retrieval Permit Application (DFW 1078; New 08/14/19), incorporated herein by reference, and Lost or Abandoned Commercial Dungeness Crab Trap Gear Retrieval Permit Amendment (DFW 1078a; New 08/14/19), a form allowing for its amendment, incorporated herein by reference, shall be made available online at www.wildlife.ca.gov.

(1) An applicant for a Retrieval Permit shall only be:

- (A) a charitable organization as defined by 26 U.S.C. § 501 (c)(3);
- (B) a sport or commercial fisherman association with a written charter or a governing board; or,
- (C) a "Local agency" within the meaning of Government Code Section 5001, or a "District" within the meaning of Harbors and Navigation Code Section 6002 or 6200.

(2) At the time of filing form DFW 1078, the applicant shall submit a nonrefundable Lost or Abandoned Commercial Dungeness Crab Trap Gear Retrieval Permit Application Fee, as specified in Section 705.

(3) At the time of filing form DFW 1078a, the applicant shall submit a nonrefundable Lost or Abandoned Commercial Dungeness Crab Trap Gear Retrieval Permit Amendment Fee, as specified in Section 705.

(d) Lost or abandoned trap gear may only be retrieved by individuals ("Designated Retrievers") using a vessel identified on a Retrieval Permit, as modified by any subsequent Retrieval Permit Amendment of that Retrieval Permit. A holder of a Retrieval Permit ("Retrieval Permittee") shall ensure the following:

(1) Every Designated Retriever under its Retrieval Permit is a commercial fishing license holder who has not had a commercial license or permit revoked or suspended and is not awaiting final resolution of any pending criminal, civil, and/or administrative action that could affect the status of the commercial license or permit.

(2) Every Designated Retriever under its Retrieval Permit has landed or has participated in landing in a commercial trap fishery in any of the previous three calendar years.

(3) Every Designated Retriever under its Retrieval Permit has access to use a commercial pump to help dislodge traps that are silted in place.

(4) No more than 10 Designated Retrievers, and 10 associated vessels, may operate under a given Retrieval Permit. A Retrieval Permittee may amend its list of Designated Retrievers and its list of vessels by submitting a Retrieval Permit Amendment to the department.

(e) Trap Gear Retrieval Logbooks. A Retrieval Permittee shall ensure that each Designated Retriever complete an accurate record of the trap gear retrieval on a Trap Gear Retrieval Logbook (DFW 1059; New 08/14/19), incorporated herein by reference, which contains instructions regarding submission to the department. Trap Gear Retrieval Logbooks shall be kept on the vessel while it is engaged in, or returning from, trap gear retrieval operations.

(f) Trap Gear Retrieval Permit Operations.

A Designated Retriever may retrieve lost or abandoned trap gear in an area starting 15 calendar days after the commercial Dungeness crab fishing season closes in that area pursuant to Fish and Game Code Section 8276 and until September 30 of that year. A Designated Retriever may also retrieve lost or abandoned trap gear during a period of time in which the Director restricts the take of Dungeness crab pursuant to Fish and Game Code Section 8276.1 or implementing regulations, if the Director authorizes retrieval operations during that time period. At no time may retrieval operations occur in an area open to commercial Dungeness crab fishing or during a designated pre-season gear setting period. Only trap gear with a Dungeness crab buoy tag issued by the department pursuant to Section 8276.5 of the Fish and Game Code may be retrieved. To the extent practicable, any lines or buoys attached to the trap shall also be retrieved.

(1) Each Designated Retriever shall keep in his/her possession a legible copy of the Retrieval Permit he/she is operating under that identifies the Designated Retriever and their associated vessel while conducting retrieval operations. At least one person aboard the vessel needs to be a Designated Retriever.

(2) Retrieved trap gear shall be stored at a secure location until collected by the Responsible Vessel Permitholder or disposed of by the Retrieval Permittee pursuant to subsection (h).

(3) Designated Retrievers and Retrieval Permittees shall, to the extent possible, prevent any additional physical damage to retrieved trap gear. Buoy tags, crab trap tags, and any other markings may not be removed from the gear

until it has been documented in the Trap Gear Retrieval Logbook and processed pursuant to subsection (h).

(4) The department may enter and conduct unannounced visits to inspect facilities and vessels of a Retrieval Permittee or a Designated Retriever used as part of the trap retrieval operation. The department may also inspect, audit, or copy at any time any permit, license, book, or record required to be kept under these regulations.

(5) A Designated Retriever who observes lost or abandoned commercial Dungeness crab trap gear located in an area where take of Dungeness crab by trap is prohibited shall inform the department Law Enforcement Division through the CalTIP Program at 1-888-334-CaLTIP (888-334-2258). A Designated Retriever may not retrieve such trap gear without written or verbal authorization from the department Law Enforcement Division.

(g) A Retrieval Permit may be suspended or revoked by the department for the violation of any provision of any California regulation, California Code, local ordinance, federal regulation, federal code, or the terms of the Retrieval Permit by the Retrieval Permittee or any of its Designated Retrievers. An entity whose Retrieval Permit has been suspended or revoked must turn over all records produced and all traps retrieved under the terms of this program pursuant to the Department's direction.

(h) A Dungeness crab vessel permitholder ("Responsible Vessel Permitholder") shall be liable to pay a Retriever Trap Fee on a per trap basis for each retrieved trap identified by a buoy tag, a buoy marked pursuant to Section 9006 of the Fish and Game Code, or a trap tag required by Section 132.1, Title 14, CCR as associated with his/her vessel permit.

(1) Retrieval Permittees and Responsible Vessel Permitholders may freely negotiate the amount of the Retriever Trap Fee.

(2) A Retrieval Permittee shall contact the Responsible Vessel Permitholder associated with retrieved trap gear via text, email or certified letter within one week of the trap gear being retrieved. The text, email or certified letter shall include contact information for the Retrieval Permittee, the number of traps retrieved, the date the traps were retrieved, and that the traps were retrieved under this Section. Retrieval Permittee shall maintain record of the text or email, or a copy of the letter and the certified mail receipt for at least one calendar year.

(3) A Retrieval Permittee shall contact all Responsible Vessel Permitholders with outstanding Retriever Trap Fees via certified letter postmarked no later than October 6. The certified letter shall include contact information for the Retrieval Permittee, all traps whose Retriever Trap Fee is outstanding, the date the traps were retrieved, and that the traps were retrieved under this Section.

Retrieval Permittee shall maintain record of the certified letter and the certified mail receipt for at least one calendar year.

(4) The title of retrieved trap gear shall be transferred to the Responsible Vessel Permitholder once the Retriever Trap Fee for that trap gear has been paid and the Responsible Vessel Permitholder takes physical possession of the trap gear. The Retrieval Permittee shall produce two copies of a receipt detailing the time, date, and the fee paid when the Responsible Vessel Permittee takes possession of the trap gear; the Retrieval Permittee and the Responsible Vessel Permittee shall each keep a copy of the receipt for at least one calendar year.

(5) Retrieval Permittee may freely dispose of retrieved trap gear only if the trap gear has not been picked up by the Responsible Vessel Permitholder or the Retriever Trap Fee owed has not been paid by the October 21 following the trap's retrieval. Retrieval Permittee must return associated buoy tags to the Department with the logbook documenting that trap's retrieval.

(i) Reimbursement. The Department shall reimburse a Retrieval Permittee \$125 for each trap that has been identified on a completed and submitted Retrieval Logbook as requiring Department Reimbursement.

(j) Notification and Deadline of Department Trap Fee and Non-Renewal of Dungeness crab vessel permit. A Trap Gear Retrieval Logbook shall identify the nonpayment of a Retriever Trap Fee by any Responsible Vessel Permitholder that would require the department to pursue a Lost or Abandoned Department Trap Fee on a per trap basis as specified in subsection 705(c) ("Department Trap Fee").

(1) All Responsible Vessel Permitholders shall pay the Department Trap Fee.

(2) By January 15 following the date of trap retrieval, any outstanding Department Trap Fee is considered late for a Responsible Vessel Permitholder and the department shall suspend the renewal and transferability of the associated Dungeness crab vessel permit. The suspension shall remain in effect until all outstanding Department Trap Fees have been paid by the Responsible Vessel Permitholder, consistent with Fish and Game Code Section 7852.2.

§ 132.8. Risk Assessment Mitigation Program: Commercial Dungeness Crab Fishery

(a) The following definitions apply to this Section:

(1) "Actionable Species" means Blue Whales, Humpback Whales, and Pacific Leatherback Sea Turtles.

(2) "Alternative Gear" means gear modifications and other gear innovations, including but not limited to ropeless gear, as authorized by the department pursuant to subdivision (h).

(3) "Close" or "closure" means the take and possession of Dungeness crab for commercial purposes is prohibited by the Director, unless use of Alternative Gear is authorized pursuant to subsections (e) and (h).

(4) "Confirmed Entanglements" means the following:

(A) "Confirmed Entanglement with California Commercial Dungeness Crab Gear" means a marine life entanglement of an Actionable Species in California Commercial Dungeness Crab Gear reported to the department by NOAA. The reported information may include entangled species, gear marking, and a determination by NOAA regarding the severity of the entanglement and any subsequent disentanglement, if available.

(B) "Confirmed Entanglement with Unknown Fishing Gear" means a marine life entanglement of an Actionable Species in Unknown Gear reported to the department by NOAA. The reported information may include entangled species, and a determination by NOAA regarding the severity of the entanglement and any subsequent disentanglement, if available.

(C) The department will provide relevant fishery information to NOAA to support entanglement investigation and response.

(D) An entanglement determined, either at time first reported or through NOAA final determination of injury or mortality (pursuant to subsection (a)(9) below), to have occurred after the death of the Actionable Species will not be considered a Confirmed Entanglement.

(E) In the event a Confirmed Entanglement involves gear from multiple fisheries, and NOAA identifies the fishing gear resulting in the initial entanglement, the entanglement will be attributed to that fishery. If the fishery resulting in the initial entanglement cannot be determined, the entanglement will be attributed equally among the fisheries.

(5) "Fishing Grounds" means the area of the Fishing Zone between shore and 100 fathoms. The 100-fathom contour is defined by approximating a particular depth contour by connecting the appropriate set of waypoints adopted in Federal regulations and published in Title 50, Code of Federal Regulations Part 660, Section 660.73 (Revised December 12, 2018), incorporated by reference herein.

(6) "Fishing Season" means any period of time in which it is lawful to deploy California Commercial Dungeness Crab gear, including presoak time periods under Fish and Game Code Section 8283, and any delays or early closures pursuant to this regulation, public health concerns under Fish and Game Code Section 5523, or quality testing under Fish and Game Code Section 8276.2.

(7) "Fishing Zone" means any of the following areas that extend from zero to 200 nautical miles offshore (U.S. Exclusive Economic Zone).

- (A) Zone 1: From the California/Oregon border (42° N. latitude) to Cape Mendocino (40° 10' N. latitude).
- (B) Zone 2: From Cape Mendocino to the Sonoma/Mendocino county line (38° 46.125' N. latitude).
- (C) Zone 3: From Sonoma/Mendocino county line to Pigeon Point (37° 11' N. latitude).
- (D) Zone 4: From Pigeon Point to Lopez Point (36° N. latitude).
- (E) Zone 5: From Lopez Point to Point Conception (34° 27' N. latitude).
- (F) Zone 6: From Point Conception to the U.S./Mexico Border.
- (G) Zone 7: "Pacific Leatherback Sea Turtle Foraging Area" from Point Arena (38° 57.5' N. latitude) to Point Pinos (36° 38.314' N. latitude).

(8) "Fleet" means holders of valid California Dungeness Crab vessel permits.

(9) "Impact Score Calculation" means the sum of Impact Scores, which are values representing severity of injury caused by Confirmed Entanglements with California Commercial Dungeness Crab Gear or Confirmed Entanglements with Unknown Fishing Gear, as defined in subsection (a)(4) and referenced in subsection (c)(1)(A). The Impact Score is determined by evaluation of evidence available to the department and will be revised if NOAA provides a final determination of injury or mortality pursuant to NMFS Policy Directive 02-238-01 Process for Injury Determinations (Issued January 27, 2012, renewed July 2014), incorporated by reference herein.

(10) "Marine Life Concentrations" means measures of local abundance of Actionable Species (Humpback Whales, Blue Whales, and Pacific Leatherback Sea Turtles) within Fishing Grounds between Point Conception and the California/Oregon Border.

(11) "NOAA" means the National Oceanic and Atmospheric Administration, and its constituent agencies, including the National Marine Fisheries Service ("NMFS"), employees, and staff.

(12) "Risk Assessment" means the assessment of risk for potential entanglement of Actionable Species with California commercial Dungeness crab gear by the Director.

(13) "Unknown Fishing Gear" means gear not identifiable in origin to a specific fishery. This definition excludes gear that is identifiable to non-fishery origins (e.g. mooring lines or research equipment including, but not limited to, weather buoys and navigational aids).

(14) "Working Group" means the California Dungeness Crab Fishing Gear Working Group, established by the department, in partnership with the Ocean Protection Council and NOAA, on September 21, 2015, as defined by its most recent charter as it may be amended from time to time (www.opc.ca.gov/whale-entanglement-working-group/).

(b) Risk Assessment Schedule: The Director shall conduct Risk Assessments as follows:

(1) The Director shall evaluate entanglement risk and need for management action as information becomes available, but at least monthly between November 1 and June 30 or the close of the Fishing Season, whichever is earlier.

(2) The Director will provide a minimum of 48 hours-notice of anticipated Risk Assessment to the Working Group and to any person who is subscribed to the Whale Safe Fisheries email list serve (visit the Whale Safe Fisheries webpage to subscribe: <https://wildlife.ca.gov/Conservation/Marine/Whale-Safe-Fisheries>). The notification will also provide all non-confidential data under consideration by the department.

(3) For any Risk Assessment, and prior to taking a management action, the Director shall consider the most recently dated Working Group management recommendation.

(4) While the Fleet is operating under a management action pursuant to this section, the Director will perform an additional Risk Assessment when new information becomes available. If such Risk Assessment indicates that the triggers in subsection (c) are no longer met, or a different management response is more appropriate, the Director shall lift or modify any restrictions in a manner that promotes fair and orderly fisheries as determined on a case by case basis.

(c) Triggers for Management Action: The Director shall restrict the take of commercial Dungeness crab as follows. If two or more triggers are attained for the same Fishing Zone, the more restrictive management action shall apply.

(1) Confirmed Entanglements as defined in subsection (a)(4) shall be evaluated during a single Fishing Season, averaged over a three-year period beginning with the 2021 calendar year (inclusive), and applied for each individual Actionable Species as specified below.

(A) Impact Score:

1. For Humpback Whales:

a. A Confirmed Entanglement in California Commercial Dungeness Crab Gear shall be scored as 0.75, unless the animal is deceased, in which case it shall be scored as one (1).

b. A Confirmed Entanglement in Unknown Fishing Gear shall be scored as 0.38, unless the animal is deceased, in which case it shall be scored as 0.5.

2. For Blue Whales and Pacific Leatherback Sea Turtles:

a. A Confirmed Entanglement in California Commercial Dungeness Crab Gear shall be scored as one (1).

b. A Confirmed Entanglement in Unknown Fishing Gear shall be scored as 0.5.

(B) Impact Score Calculation - Actions Taken During a Fishing Season:

1. Humpback Whales: For each Confirmed Entanglement during a single Fishing Season, the Director shall implement a Fishing Zone closure, or other management action as described in subsection (e) that the Director demonstrates protects Humpback Whales based on best available science. If an Impact Score Calculation of three (3) or more is reached, the Director will close the remainder of the Fishing Season statewide.

2. Blue Whales: For each Confirmed Entanglement during a single Fishing Season, the Director shall implement a Fishing Zone closure, or other management action as described in subsection (e) that the Director demonstrates protects Blue Whales based on best available science.

3. Pacific Leatherback Sea Turtles: For each Confirmed Entanglement during a single Fishing Season, the Director shall implement a Fishing Zone closure, or other management action as described in subsection (e) that the Director demonstrates protects Pacific Leatherback Sea Turtles based on best available science.

(C) Impact Score Calculation - Actions Taken During a Calendar Year:

1. Humpback Whales: For any Confirmed Entanglement that causes the average total annual Impact Score Calculation during the previous two calendar years and current calendar year to exceed two (2), the Director shall consult with NOAA and the Working Group. After consultation, the Director shall implement a management action(s) described in subsection (e).

2. Blue Whales: For any Confirmed Entanglement that causes the average total annual Impact Score Calculation during the previous two calendar years and current calendar year to exceed one (1), the Director shall consult with NOAA and the Working Group. After consultation, the Director shall implement a management action(s) described in subsection (e).

3. Pacific Leatherback Sea Turtle: For any Confirmed Entanglement where the average total annual Impact Score Calculation during the previous

two calendar years and current calendar year is greater than or equal to one (1), the Director shall consult with NOAA and the Working Group. After consultation, the Director shall implement a management action(s) described in subsection (e).

(2) Marine Life Concentrations: for the purposes of determining Marine Life Concentrations in this subsection (c)(2), the Director may only consider data for Actionable Species from current surveys and telemetry monitoring of Actionable Species designed, conducted, or approved by NOAA or the department as an indication of Marine Life Concentrations in Fishing Zones during the timeframes of November 1 until the Fishing Season opens statewide, and March 1 until the Fishing Season closes statewide. Surveys shall be conducted systematically across a full range of Fishing Zone depths when weather and visibility conditions enable accurate detection of Actionable Species. A survey is only current through the first Risk Assessment immediately following the survey.

(A) For the period of November 1 until the Fishing Season opens statewide:

1. If data are unavailable by November 1, the Fishing Season will be delayed in that Fishing Zone(s) until December 1.
2. If data are unavailable by December 1, the Fishing Season will be delayed in that Fishing Zone(s) until December 15.
3. If data are unavailable by December 15, the Fishing Season will be delayed in that Fishing Zone(s) until December 31.
4. If there are data to inform marine life concentrations under this subsection in each Fishing Zone(s), the following applies:
 - a. Humpback Whales - If the number of Humpback Whales is greater than or equal to 20, or there is a running average of five (5) or more animals over a one-week period within a single Fishing Zone (excluding Zone 7), the Director shall implement a Fishing Season delay or other management action as described in subsection (e) that the Director demonstrates protects Humpback Whales based on best available science.
 - b. Blue Whales - If the number of Blue Whales is greater than or equal to three (3), or there is a running average of three (3) or more animals over a one-week period, within a single Fishing Zone (excluding Zone 7), the Director shall implement a Fishing Season delay or other management action as described in subsection (e) that the Director demonstrates protects Blues Whales based on best available science.
 - c. Pacific Leatherback Sea Turtle - The Director shall not open any Fishing Zone containing a Pacific Leatherback Sea Turtle, unless the Director demonstrates other management action as described in subsection (e)

protects Pacific Leatherback Sea Turtles based on best available science.

(B) For the period of March 1 until Fishing Season closes statewide:

1. If data are unavailable by March 15 for each Fishing Zone, the Director shall implement a management action as described in subsection (e) for the Zone(s).
2. If there are data to inform marine life concentrations under this subsection in each Fishing Zone(s), the following applies:
 - a. Humpback Whales - If the number of Humpback Whales is greater than or equal to 10, or a running average of five (5) within in a single Fishing Zone (excluding Zone 7), the Director shall implement a Fishing Zone closure or other management action as described in subsection (e) that the Director demonstrates protects Humpback Whales based on best available science.
 - b. Blue Whales - If the number of Blues Whales is greater than or equal to three (3), or there is a running average of three (3) or more animals over a one-week period within a single Fishing Zone (excluding Zone 7), the Director shall implement a Fishing Zone closure or other management action as described in subsection (e) that the Director demonstrates protects Blue Whales based on best available science.
 - c. Pacific Leatherback Sea Turtle - If the number of Pacific Leatherback Sea Turtles is greater than or equal to one (1) within any Fishing Zone, the Director shall implement a Fishing Zone closure or other management action as described in subsection (e) that protects Pacific Leatherback Sea Turtles based on best available science.

(d) Management Considerations: The Director shall base decisions made under this section on best available science. In doing so, the Director will, to the maximum extent possible, rely on scientific information relevant to a management issue, such that any conclusions drawn are reasonably supported and not speculative, and publicly available. The Director shall consider the following information to assess appropriate management action under subsection (e) if action under subsection (e) is specified by subsection (c):

- (1) Working Group management action recommendation and best available science made available to the department related to considerations identified in this subsection.
- (2) Information from NOAA.
- (3) Effectiveness of management measures to minimize entanglement risk.

- (4) If deciding between management measures that equivalently reduce entanglement risk, total economic impact to the Fleet and fishing communities, with impacts anticipated to increase for delays in the fall and decline in the spring.
- (5) Data availability within and across Fishing Zones. Application of management measures can be limited to a Fishing Zone if data are available for that zone. If data are not available, historical data or data from an adjacent Fishing Zone may be used.
- (6) Known historic marine life migration patterns. Entanglement risk is expected to decrease in the fall when Actionable Species are anticipated to leave the Fishing Grounds. Conversely, entanglement risk is expected to increase in the spring when Actionable Species return.
- (7) Fishing Season dynamics, including factors that impact the concentration or geographic location of fishing effort, amount of fishing gear deployed in a Fishing Zone, and season delays based on quality testing and/or public health closures or hazards.
- (8) Known distribution and abundance of key forage (such as anchovy, krill or jellyfish concentrations) and their influence on Actionable Species' feeding behavior.
- (9) Ocean conditions (including but not limited to temperature, upwelling, El Niño, La Niña, weather, currents) that influence presence and aggregation of marine life (such as habitat compression) and affect vessel operations.
- (10) Current Impact Score Calculation within Fishing Season and calendar year.
- (11) Marine Life Concentrations and their spatial distribution over the course of the current Fishing Season as an indication of marine life migration into or out of Fishing Grounds and across Fishing Zones.

(e) Management Actions: When specified in subsection (c), and upon consideration of information outlined in subsection (d), the Director shall implement one or more of the following management action(s) due to risk of marine life entanglement:

- (1) Fleet Advisory: If the level of risk is elevated and/or anticipated to increase but more restrictive management actions are not necessary, the Director may issue an advisory notice to the Fleet to employ voluntary efforts and/or measures to reduce the risk of entanglements (i.e., best fishing practices) and to avoid triggering additional management actions.
- (2) Depth Constraint: The Director may use a depth constraint during the Fishing Season, within any or all Fishing Zone(s), where Dungeness crab may not be taken or possessed in waters within a specified depth range. "Depth" is

defined by approximating a particular depth contour by connecting the appropriate set of waypoints adopted in Federal regulations and published in Title 50, Code of Federal Regulations Part 660, sections 660.71 through 660.73 (Revised December 12, 2018), incorporated by reference herein.

(3) Vertical Line/Gear Reduction: The Director may decrease the number of vertical lines or amount of gear (e.g., number or percentage of traps) an individual permit holder can use such that there will be a reduction in the total number of lines in use. The Director will determine the reduction amount based on the most recent information provided pursuant to subsection (g). Gear reduction may occur statewide, or within any or all Fishing Zone(s). Buoy tags issued pursuant to Fish and Game Code Section 8276.5 shall be reduced consistent with a Director's declaration, and all unused buoy tags shall be onboard the permitted vessel and available for inspection by the department upon request.

(4) Fishery Closure: The Director may prohibit the take and possession of commercial take of Dungeness crab within any Fishing Zone(s).

(5) Alternative Gear: During a closure occurring on April 1 or later, and upon authorization pursuant to subsection (h), the Director shall allow the use of Alternative Gear within any closed Fishing Zone(s).

(f) Notification process for management actions taken in response to Risk Assessment. The Director shall comply with the following when taking a management action(s) pursuant to subsections (c) and (e).

(1) Management actions shall be transmitted via a Director's declaration. The declaration shall describe the following:

(A) Information supporting the determination of management action pursuant to subsection (c).

(B) Relevant management considerations from subsection (d).

(C) Rationale for nexus between management considerations in subsection (d) and any chosen management action under subsection (e).

(D) Duration of management action.

(E) Authorization of the Lost or Abandoned Dungeness Crab Trap Gear Retrieval Program described in Section 132.7 and/or Alternative Gear if applicable.

(2) The Director shall provide a minimum of 72 hours' notice to ensure a fair and orderly operation of the Fleet before implementing any management action regarding take of Dungeness crab.

(3) Notice of any management actions shall be communicated, at a minimum, via the "Whale Safe Fisheries" email list-serve and the department's "Whale Safe Fisheries" webpage (<https://wildlife.ca.gov/Conservation/Marine/Whale-Safe-Fisheries>). The department will request the U.S. Coast Guard issue a Broadcast Notice to Mariners via VHF/Channel 16.

(g) Mandatory Data Reporting Requirements

(1) Fishing Activity Reporting Requirement: When participating in the California commercial Dungeness crab fishery, all vessels must submit bi-weekly reports that include permit number, current Fishing Zone, depth range, and number of traps deployed at the time of reporting. Reports shall be submitted on or before the first and 16th day of each month. At the conclusion of the Fishing Season the number of lost traps shall also be reported on the final bi-weekly report that is submitted to the department. All reports shall be submitted via email or text to Whalesafefisheries@wildlife.ca.gov.

(2) Electronic Monitoring:

(A) When operating under a depth constraint or when using Alternative Gear pursuant to subsection (e), all vessels must have an operational electronic monitoring system affixed to their vessel and must be recording location while engaged in any fishing activity for commercial Dungeness crab. Electronic monitoring systems must be capable of tracking and recording vessel location using GPS coordinates at a frequency of no less than once a minute during fishing operations. Electronic monitoring data shall be made available to the department or authorized agent upon request for the duration of the fishing period and 60 days thereafter.

(B) By the 2023-24 Fishing Season, all vessels will be required to carry an electronic monitoring device that is capable of tracking and recording vessel location using GPS coordinates at a frequency of no less than once a minute during fishing operations when participating in the California commercial Dungeness crab fishery. Data shall be made available to the department within 72-hours of request.

(3) Alternative Gear Reporting Requirement: Any permitholder using Alternative Gear is required to submit an annual report summarizing pounds of crab harvested with Alternative Gear, amount and location of gear deployed, and amount and location of lost gear. The report shall be submitted within 30 days of the close of the Fishing Season to Whalesafefisheries@wildlife.ca.gov.

(4) All information collected pursuant to this subsection (g) shall remain confidential to the extent permitted by law. Insofar as possible, the information shall be compiled or published as summaries, so as not to disclose the individual record or business of any person.

(h) Alternative Gear:

(1) Authorization

(A) Upon written request, the department shall authorize Alternative Gear types for use to take Dungeness crab for commercial purposes as allowed pursuant to this section.

(B) The department shall authorize Alternative Gear that meets the following criteria:

1. Detectability: detectability by the department, fishermen and public, including description how location of Alternative Gear is available visually or virtually, equipment specifications including costs, and any required specialized equipment or training to deploy, operate, or detect the gear. If "ropeless," the gear must be used with software that enables department law enforcement and other fishing vessels within 1/4 mile of the gear to identify the location of the gear at all times when it is deployed.
2. Retrievability: means of retrieval, including description of release mechanism, equipment and any specialized training needed to deploy and/or retrieve Alternative Gear, description of safeguards and procedures to minimize gear loss and ghost gear, with gear loss rates of no more than 10%. Gear must include a back-up release capability so it will surface in the event of an equipment failure and must include a gear recovery plan if the gear does not rise to the surface.
3. Ability to Identify: means of Alternative Gear identification, including the method or description of the mechanism required for the department to identify Alternative Gear to permitholder both remotely when submerged, and at the surface.
4. Benefit: evidence Alternative Gear reduces risk or severity of entanglement.
5. Enforceability: including means by which department law enforcement can find and retrieve the Alternative Gear at sea and costs of any necessary equipment and/or training. Department law enforcement must be able to retrieve and redeploy the gear.

(C) Written requests for Alternative Gear authorization shall be submitted to the department at WhaleSafeFisheries@wildlife.ca.gov. Written requests shall contain the following information:

1. Name, address, and contact information of requestor; and, if applicable, name, address, and contact information of Alternative Gear manufacturer.

2. Detailed description of each component of the Alternative Gear and how it operates.
3. Alternative Gear research trial results, including (i) the number, depth and location of trials; (ii) gear loss rates of no more than 10%, and (iii) description of the ocean conditions during trials.
4. Documentation of how the Alternative Gear performs to meet the criteria outlined in subsection (h)(1)(B) above.
5. Description of an Alternative Gear recovery plan in the event retrieval is unsuccessful.
6. Description of gear retrieval system required by department law enforcement to retrieve and deploy gear.
7. Signed statement verifying all information provided is accurate.

(D) The department may decline to authorize Alternative Gear in writing within 60 days of receipt of written request on the following considerations, upon review of a written request:

1. Written request is incomplete because it does not contain the information required under (h)(1)(C) or does not include details sufficient for the department to determine whether the proposed Alternative Gear meets criteria set forth in subsection (h)(1)(B).
2. As described by the requestor, the gear does not meet criteria set forth in subsection (h)(1)(B).
3. Gear retrieval equipment or technology is cost prohibitive to the department.
4. Gear does not comply with other applicable Federal, State or local laws or regulations.
5. Gear relies on technology that is proprietary and not routinely available to the department or public.

(2) Deauthorization: The department may deauthorize Alternative Gear on a case-by-case basis if that equipment no longer meets the criteria listed in (h)(1)(B). If deauthorization occurs during the Fishing Season, the Fleet will be notified by the department in the manner described in (f)(3) and will have 8 days to remove Alternative Gear from Fishing Grounds or by the end of the season, whichever occurs first.

(3) The department shall keep a current list of all authorized Alternative Gear on its Whale Safe Fisheries webpage (<https://wildlife.ca.gov/Conservation/Marine/Whale-Safe-Fisheries>).

§ 180.5. Trap Buoy Identification

(a) Pursuant to the provisions of Section 9005 of the Fish and Game Code, every trap or string of traps placed in waters of the state to take fin fish, mollusks or crustaceans for commercial purposes shall be marked with a buoy.

(b) Notwithstanding requirements set forth in Fish and Game Code Section 9006, starting May 1, 2020:

(1) Every buoy marking a commercial trap used in a fishery described below shall be marked exclusively with the Identification Letter specific to that fishery.

(2) At least one buoy marking each trap, or each end of a string of traps, shall be marked with the Identification Number followed by an Identification Letter.

(3) Identification Numbers and Identification Letters shall be as follows:

<i>Fishery & Gear Type</i>	<i>Identification Number</i>	<i>Identification Letter</i>
Lobster Trap	operator's commercial fishing license identification number	P
Rock Crab Trap	operator's commercial fishing license identification number	X
Tanner Crab Trap	vessel's commercial boat registration number	T
Spot Prawn Trap	operator's commercial fishing license identification number	S
Coonstripe Shrimp Trap	operator's commercial fishing license identification number	C
Nearshore Finfish Trap	operator's commercial fishing license identification number	Z

(c) All Identification Numbers shall be at least one and one-half (1.5) inches in height and drawn with a line no less than $\frac{1}{4}$ (0.25) inch thick.

(d) Identification Letters shall be at least three (3) inches in height and drawn with a line no less than $\frac{1}{4}$ (0.25) inch thick. Every buoy shall be marked as follows:

(1) Buoys that are four (4) inches in diameter or greater shall have Identification Letters marked on four opposing sides; and

(2) Buoys that are smaller than four (4) inches in diameter shall have Identification Letters marked on two opposing sides.

(e) All Identification Numbers and Identification Letters on a buoy shall be clearly and distinctly marked, and in a color that contrasts with the buoy; the numbers and letters shall be applied and maintained so that they are visible and legible.

