

**CCR Title 14. Department of Fish and Game
Notice published July 6, 2012**

NOTICE OF PROPOSED RULEMAKING

The Department of Fish and Game (Department) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department will hold a public hearing starting at 11:00 a.m. on August 20, 2012, in Conference Room 405 at the Rattigan State Office Building, 50 D Street, Santa Rosa, California 95404. The conference room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests but does not require that the persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. All written comments must be received by the Department at this office no later than 5:00 p.m. on August 20, 2012. All written comments must include the true name and mailing address of the commenter.

Written comments may be submitted by mail, fax, or e-mail, as follows:

Department of Fish and Game
Marine Region
Peter Kalvass, Senior Environmental Scientist
32330 North Harbor Dr.
Fort Bragg, CA 95437
Fax: (707) 964-0642
Email: pkalvass@dfg.ca.gov

AUTHORITY AND REFERENCE

The addition of Fish and Game Code Section 8276.5 authorizes the Department to adopt these proposed regulations. This proposed rulemaking will implement, interpret, and make specific Fish and Game Code Section 8276.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The passing of SB369 in 2011 added Section 8276.5 to the Fish and Game Code, which imposes trap limits on Dungeness crab vessel permit holders. A copy of Senate Bill 369 can be found at this link: http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0351-0400/sb_369_bill_20110926_chaptered.pdf. The legislative statute authorizes the Department under the authority of the Director to implement the program. The Department's Marine Region (MR), Law Enforcement Division (LED), and License and Revenue Branch (LRB) have drafted new regulations to be adopted in Title 14 of the California Code of Regulations (CCR). The regulations were designed with the intent that each permit holder can only operate the number of traps within their trap tier limits. In addition, the Dungeness Crab Task Force after reviewing the Department's regulations, has approved the new regulations with a vote in the affirmative, which is "considered to be evidence of consensus in the Dungeness crab industry" as stated in section 8276.5(c) of the Fish and Game Code.

Permit holders will be assigned to one of seven trap tiers between 175 and 500 traps. Dungeness crab permitted vessels will no longer be able to fish more than the crab trap allotment tier to which they are assigned. During the commercial Dungeness crab season, each Dungeness crab trap on board a permitted vessel will be required to have a Department-issued buoy tag affixed to the main buoy and a proper trap tag affixed to the trap. These traps can only be used for the commercial take of crab.

The Department-issued buoy tags will be assigned and distributed by LRB to the Dungeness crab vessel permit holder while the trap tag will be provided by the permit holder. For each trap in their tier, permit holders must purchase a Department-issued buoy tag assigned to their permit at the same time they purchase their biennial trap limit permit and renew their Dungeness crab vessel permit. Buoy tags and trap limit permits are required to be purchased every other year, biennially. Fees for the buoy tag and permit will be updated and contained in Section 705, Title 14, CCR, commercial fishing applications, permits, tags and fees and will be collected by LRB.

Trap limits and Department-issued buoy tags can only be transferred as part of a transaction authorized in Section 8280.3 of the Fish and Game Code, and those permit holders in Tier 7 with 175 traps will not be able to transfer tags for the first two years of the program. Any person with a valid northern or southern rock crab permit aboard a permitted Dungeness crab vessel will not be able to fish with rock crab traps 30 days prior to the pre-soak period or commercial Dungeness crab season opener, whichever comes first. Vessels with both a Commercial Passenger Fishing Vessel (CPFV) license and a Dungeness crab permit may fish for Dungeness crab, either recreationally or commercially, during the commercial Dungeness crab season only.

Dungeness crab permit holders will still be able to contract an unpermitted vessel for the use of deploying their crab traps as specified in Section 8280.7 of the Fish and Game Code. To prevent permitted vessels from fishing more traps in their tier, but accommodate instances when it is necessary to retrieve derelict traps, permitted vessels will be allowed to retrieve up to six such traps in season and any number of traps between July 16th and October 31st of each year. In the event that a permitted vessel is unable to retrieve their traps in season, waivers can be granted by the Department for the purpose of granting permission for another permitted vessel to retrieve those traps.

The replacement procedures for lost or damaged Department-issued buoy tags will allow for permit holders to purchase replacement tags in-season or new tags between each season of the biennial period. Up to 10% of a permit holder's buoy tag allotment tier can be purchased in-season after 30 days from the start of the season where the permit holder began fishing. These replacement tags must be returned to the Department between seasons, and permit holders at this time have the option of purchasing any number of new tags in order to replenish all lost or damaged Department-issued buoy tags in their tier. In the event that tags are lost or damaged due to circumstances beyond the control of the permit holder, the fee and maximum allocation for replacement tags in-season may be waived if the event can be justified. Fees for the replacement tags are summarized in Section 705, Title 14, CCR, and will be collected by LRB.

A permit holder can request an appeal to either increase or decrease the trap allotment tier to which they are assigned provided that the appeal is postmarked to the director before March 31, 2014. The appeal process will be initiated within 12 months of the postmarked date as stated in statute. The fees to either increase or decrease a trap allotment tier will be updated and contained in Section 705, Title 14, CCR, and will be collected by LRB.

A summary of the proposed regulations to be added to Title 14, CCR:

- 1) Section 132.1 explains the proper use of the trap tags and Department-issued buoy tags on commercially fished Dungeness crab traps on board permitted vessel, and further defines the trap and buoy tag allocations already in statute;
- 2) Section 132.2 details the instances when a permitted vessel may have derelict traps on board including the waiver process for a permitted Dungeness crab vessel to retrieve another vessel's Dungeness crab traps;

- 3) Section 132.3 describes the application process for purchasing the new biennial Dungeness crab trap limit permit;
- 4) Section 132.4 details the replacement procedures for lost Department-issued buoy tags, and;
- 5) Section 132.5 describes the appeal process for Dungeness crab trap and buoy tag allocations and deadlines;
- 6) Section 705 is amended with the biennial crab trap limit permit fee, the price per Department-issued buoy tag and replacement tags, as well as the appeal fees to either increase or decrease trap allotment tiers.

The specific benefits anticipated by the adoption of these regulations will help to ensure that each permit holder operates no more than their allotted number of traps with the proper use of department-issued buoy tags assigned to each permitted vessel, while allowing for those instances when it is necessary to retrieve another permit holder's traps. The regulations also address the specific procedures to purchase a biennial trap limit permit, to replace lost or damaged department-issued tags, and to request an appeal to either increase or decrease trap tiers.

The proposed regulations have been evaluated and found to be consistent or compatible with the existing state or federal regulations. Fish and Game Code section 8276.5 authorizes the Department to adopt these proposed regulations in order to implement this code section.

Forms Incorporated by Reference:

- 1) 2013-2014 In-Season Replacement Dungeness Crab Buoy Tag Affidavit (FG 1303 Rev 05/12));
- 2) 2014 Between-Season Replacement Dungeness Crab Buoy Tag Affidavit (FG 1302 Rev. 05/12)

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies or school districts: None.

Costs or savings to any state agency: It is estimated that staff time to process requests related to these rules will be absorbed in the normal course of business. However, the

actual costs may be higher if appeals, waivers and replacement tag requests are higher than expected.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Costs or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: Since these proposed regulations further refine costs and trap limit program procedures that are already described in legislative statute there are no additional cost impacts on a representative private person or business.

Effect on Small Business: The Department is not aware of any effects that a small business would necessarily incur in reasonable compliance with the proposed action. The costs associated with purchasing department-issued buoy tags, replacement tags, and the biennial trap limit permit as well as the appeal process are already described in statute while the proposed regulations only further specify the application procedures.

Housing Costs: None.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

These proposed rules are designed to effectively and smoothly facilitate implementation of an existing statutory crab trap program. The rules themselves are not expected to significantly adversely impact California jobs and businesses. These rules were created with extensive input from the Dungeness crab industry via the Dungeness Crab Task Force and are designed to implement the trap program with the least impact on the crab fishing industry within the framework delineated in section 8276.5(c) of the Fish and Game Code. These rules specify fee amounts, procedures and processes for waivers and appeals, as well as for purchasing replacement buoy tags and the Dungeness Crab Trap Limit Permit. The tags, permits, fees and their maximum costs are authorized in statute and so their impacts are not addressed directly in this impact analysis.

Adoption of these regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California;
- (3) Affect the expansion of businesses currently doing business within California.

Adoption of these regulations will:

- (1) Help to ensure that Dungeness crab permitted vessels commercially fish for Dungeness crab within their trap tier limits;
- (2) Ensure that commercial Dungeness crab traps are for the exclusive use of commercial Dungeness crab fishing as a measure to help sustain the crab resources;
- (3) Limit those Dungeness crab permit holders who also possess a Commercial Passenger Fishing Vessel license to only recreationally fish for crab during the commercial season in order to prevent pre-season prospecting;
- (4) Prevent those Dungeness crab permit holders who also possess a rock crab permit from fishing for rock crab 30 days before the Dungeness crab season opens, to limit pre-season prospecting;
- (5) Grant permit holders, in the event of emergency circumstances, a no-cost waiver from the Department that allows them to retrieve another permit holder's tagged commercial traps in-season.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternatives it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Peter Kalvass
Address: 32330 North Harbor Dr.
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or:

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Name: Christy Juhasz
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Website Access: Materials regarding this proposal can be found at:
www.dfg.ca.gov/news/pubnotice.

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based, to Peter Kalvass or Christy Juhasz at the above addresses.

AVAILABILITY OF THE STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above addresses. As of the date this notice is published, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting the Department.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Peter Kalvass or Christy Juhasz at the addresses posted in this document. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the Department at the addresses posted in this document.

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AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at:
www.dfg.ca.gov/news/pubnotice.