

INITIAL STATEMENT OF REASONS

TITLE 14. NATURAL RESOURCES DIVISION 1. FISH AND GAME COMMISSION – DEPARTMENT OF FISH AND GAME SUBDIVISION 1. FISH, AMPHIBIANS AND REPTILES CHAPTER 6. FISH, COMMERCIAL

ADDING SECTIONS 132.1-132.4 AND AMENDING SECTIONS 705 AND 132.5 TITLE 14, CALIFORNIA CODE OF REGULATIONS (DUNGENESS CRAB TRAP LIMIT PROGRAM)

SPECIFIC PURPOSE OF THE REGULATION

A Dungeness crab trap limit program was passed by the legislature and signed by the Governor in 2011, adding Section 8276.5 to the Fish and Game Code. This program imposes limits on the number of traps that Dungeness crab vessel permit holders can operate during the season. While the statute outlines the trap limit program, the Department of Fish and Game (Department) is authorized by statute to implement the program, which requires that new fees for permits and tags be added to Section 705, Title 14, California Code of Regulations (CCR) and new regulations be adopted in Title 14, CCR. The rulemaking process will be conducted by the Department, and the regulations must be established under authority of the Director by March 31, 2013.

In order to execute this new law, the Department has drafted additional regulations following the rulemaking process as outlined in the Administrative Procedures Act (APA).

The following six elements will be addressed and contained in Title 14, CCR, Sections 132.1-132.5 and 705:

1. Dungeness crab trap tags, Department issued buoy tags, and trap and buoy tag allocations defined,
2. Waiver process to allow a permitted Dungeness crab vessel to retrieve another vessel's Dungeness crab traps,
3. The newly established biennial Dungeness crab trap limit permit,
4. Replacement procedures for lost Department-issued Dungeness crab buoy tags,
5. The appeal process for Dungeness crab trap and buoy tag allocations and deadlines, and

6. Cost of fees for the biennial crab trap limit permit, department-issued buoy tags and replacement tags, and the appeal fees for increasing or decreasing trap allotment tiers.

Permitholders will be assigned to one of seven trap tiers between 175 and 500 traps. For each trap in their tier, permitholders must purchase a Department-issued buoy tag that identifies the vessel and its tier. During the commercial Dungeness crab season, each permitted vessel will be required to properly affix a Department-issued buoy tag to the main buoy and a trap tag, provided by the permitholder, to every trap on board their vessel to ensure they only operate the number of traps in their assigned trap tier. These tagged traps can only be used for the commercial take of crab. The Department-issued buoy tags will be assigned and distributed by License and Revenue Branch (LRB) to the appropriate Dungeness crab vessel permitholder and their proper use will be enforced by Law Enforcement Division. Permitholders will also be required to purchase a biennial trap limit permit. The process for replacing lost buoy tags is detailed in the new regulations as well. Fees for the buoy tag, permit and replacement tags will be added to Section 705, Title 14, CCR, commercial fishing applications, permits, tags and fees, and will be collected by LRB.

Possession of another permitholder's traps on board a permitted vessel is not allowed without a waiver from the Department. 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 permitholders in Tier 7 with 175 traps will not be able to transfer tags for the first two years of the program. A permitholder may request an appeal of their trap tier assignment by submitting the request to the director postmarked no later than March 31, 2014.

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

- 1) Section 132.1 is added to explain 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 is added to describe 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 is added to describe the application process for purchasing the new biennial Dungeness crab trap limit permit;
- 4) Section 132.4 is added to detail the replacement procedures for lost Department-issued buoy tags, and;

- 5) Section 132.5 is amended to describe the appeal process for Dungeness crab trap and buoy tag allocations and deadlines.
- 6) Section 705 is amended to add the biennial crab trap limit permit fees, the price per Department-issued buoy tag and replacement tags, as well as the fees to appeal either an increase or decrease of allotment tiers;

The specific benefits anticipated by the adoption of these regulations will help to ensure that each permitholder 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 permitholder'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.

NECESSITY

Regulations for implementing the trap limit program outlined in Section 8276.5 of the Fish and Game Code currently do not exist. This proposed regulation package is needed to establish and initiate the trap limit program by the 2013/14 Dungeness crab season.

Section 8276.5 of the Fish and Game Code reads as follows:

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

(A) 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 permit holder 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 annually provide an accounting of all costs associated with the crab trap limit program. Excess funds collected by the department shall be used to reduce the cost of the crab trap limit permit fee or tag fee in subsequent years of the program.

(5) Permit holders 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.

(6) An individual may submit an appeal of a trap tag allocation received pursuant to this section, by March 31, 2014, to the director on a permit-by-permit basis for the purpose of revising upward or downward any trap tag allocation 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. An individual requesting an appeal 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."

The proposed Departmental regulations explicitly describe the issuance procedures for permit holders to acquire their biennial permit, trap tags affixed to the buoy, and replacement tags from LRB. These regulations require that all traps on board permitted vessels are properly tagged to ensure that these vessels are operating within their trap tier limits. Regulations also accommodate instances when it is necessary to retrieve derelict traps, and 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 allowing another permitted vessel to retrieve those traps. Finally, the appeal process procedures are also further defined with these regulations.

These rules were crafted during a series of meetings with the Dungeness crab task force where each line of proposed regulations were carefully vetted with the industry representatives and other members of the task force in order to gain consensus and to help to ensure that the methods chosen to implement the program were the most efficient and effective possible. The fees for buoy tags, permits, etc. listed in the rules were set based on fiscal analyses completed by the affected department functions during the analysis phase of the legislative process leading to passage of the crab trap

limit program.

PROBLEM ADDRESSED WITH THIS RULEMAKING

This rulemaking allows the Department to initiate the trap limit program in compliance with statute by detailing the issuance of permits and tags, as well as the procedures to make an appeal of a permit holder's tier placement. The rules also describe proper use of tags affixed to each trap buoy on board a permitted vessel to ensure that a vessel is only operating the number traps within their tier limits. In addition, the rules clarify a potential ambiguity in statute created by the use of the single term "crab trap tags" to mean two different types of tags. The Department is proposing to call one a buoy tag that is provided by the Department for a fee and the trap tag that is provided by the permit holder, with tag information requirements defined in the rules.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

Oregon and Washington states already have Dungeness crab trap limit programs in place for their respective commercial fisheries. Department staff reviewed Washington and Oregon's regulations concerning their trap limit programs. The proposed regulations borrowed similar language from these established trap limit programs concerning replacement tag procedures and to allow retrieval of a set number of derelict traps.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

There were no reasonable alternatives identified during the two consultation meetings with the Dungeness Crab Task Force (DCTF) in March and April 2012. In addition, the DCTF 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.

Public comments regarding the proposed regulations resulting from the public notification will be evaluated for inclusion in the final statement of reasons verbatim and responses will be prepared and submitted for all comments as part of the regulatory process. Additional public comments regarding this regulatory proposal will be solicited at a public meeting to be scheduled in Santa Rosa, CA on August 20, 2012.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL OR OTHER BUSINESSES

The proposed regulatory actions will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Therefore, the Department has not identified any alternatives that will lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

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 of the Fish and Game Code. These rules specify procedures and processes for appeals of trap allocations and waivers to retrieve another's traps, as well as for purchasing replacement buoy tags and the Dungeness Crab Trap Limit Permit. Fee amounts for buoy tags and the trap limit permit are also specified. The tags, appeals, permits, fees and their maximum costs are authorized in statute and so their impacts are not addressed directly in this impact analysis.