

TITLE 14. DEPARTMENT OF FISH AND GAME
PROPOSED REGULATIONS
Text of Modified Regulations

The original proposal is in single underline. Changes are illustrated by double underline for proposed additions and by strikeout for proposed deletions.

Section 132.1 Title 14, CCR, is ADDED to read:

Section 132.1. Dungeness Crab Trap Tags, ~~Department-Issued~~ Biennial Buoy Tags, and Trap and Buoy Tag Allocations.

Beginning with the 2013 Dungeness crab season, 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 and a valid ~~department issued~~ tag assigned to that vessel attached to the buoy.

(a) Dungeness Crab Trap Tags.

Dungeness crab trap tags shall be supplied by the owner of the Dungeness crab trap and shall contain ~~contact information sufficient to identify the vessel operating the trap~~ the trap owner's telephone number. ~~The~~ A Dungeness crab trap tag is required on Dungeness crab traps onboard a permitted Dungeness crab vessel. 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 ~~Department-Issued~~ 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 ~~department issued~~ 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 ~~department~~ buoy tag shall ~~mandate the information that is required to appear on these buoy tags.~~ 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 permit holder 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 ~~specified in Section 705~~ \$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) It is unlawful to remove, damage, or otherwise tamper with buoy tags or trap tags except by the permit holder or someone with the express permission of the permit holder when lawfully applying or removing tags on the permit holder's own buoy tags and traps.~~

~~(2)~~ (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

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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 permit holder 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 subparagraph (A), and each permit holder 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 subparagraph (B), and each permit holder 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 subparagraph (C), and each permit holder 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 subparagraph (D), and each permit holder 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 subparagraph (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 permit holder 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 permit holder 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 as described in 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 as described in this section and in Section 8276.5(a)(1) of the Fish and Game Code.

Note: Authority cited: 8276.5, Fish and Game Code.
Reference: Section 8276.5, Fish and Game Code.

Section 132.2 Title 14, CCR, is ADDED to read:

Section 132.2. Waiver for a Permitted Dungeness Crab Vessel to Retrieve Another Vessel's Dungeness Crab Traps.

- (a) No Dungeness crab permitted vessel shall possess, use, control, or operate any Dungeness crab trap without a department issued buoy tag assigned to that vessel except as provided:
 - (1) To set gear as allowed under Section 8280.7 of the Fish and Game Code.
 - (2) To retrieve from the ocean and transport to shore commercial Dungeness crab trap(s) of another permitted Dungeness crab vessel which were lost, damaged, abandoned, or otherwise derelict; provided that:
 - (A) No more than six (6) derelict Dungeness crab traps may be retrieved per fishing trip, except as provided in subparagraphs (E) and (F).
 - (B) Crab from the retrieved Dungeness crab trap(s) shall not be retained and shall be returned to the ocean waters immediately; and
 - (C) Immediately upon retrieval of Dungeness crab trap(s), the retrieving vessel operator shall document in the retrieving vessel's log the date and time of trap retrieval, number of retrieved Dungeness crab traps, location of retrieval, and retrieved trap tag information; and
 - (D) Any retrieved Dungeness crab trap(s) shall be transported to shore during the same fishing trip that retrieval took place;

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(E) From July 16 through October 31, an unlimited number of Dungeness crab traps may be retrieved per fishing trip and transported to shore during the same fishing trip; or

(F) Under a waiver granted by the department to allow retrieval of more than six (6) Dungeness crab traps to shore by another Dungeness crab permitted vessel provided that:

(1) Vessel is incapacitated due to a major mechanical failure, or destroyed due to fire, capsizing, or sinking;

(2) Circumstances beyond the control of the permit holder created undue hardship.

(3) A request for the waiver shall be submitted in writing to the department's License and Revenue Branch

(4) A copy of the waiver approved by the department shall be on board the vessel making the retrieval.

(5) The waiver may include conditions such as time period to conduct retrieval, landing prohibitions or any other criteria the department deems necessary.

Note: Authority cited: 8276.5 and 9002.5, Fish and Game Code.

Reference: Section 8276.5 and 9002.5, Fish and Game Code.

Section 132.3 Title 14, CCR, is ADDED to read:

Section 132.3. Biennial Dungeness Crab Trap Limit Permit.

(a) Effective Date.

Beginning with the 2013 Dungeness crab season any a person with who purchases a valid Dungeness crab vessel permit shall also have purchase a valid biennial Dungeness Crab Trap Limit Permit along with all the buoy tags for that permitholder's tier to take Dungeness crab for commercial purposes using trap gear, otherwise the Dungeness crab vessel permit shall become null and void. The permit shall be purchased at the same time as a Dungeness Crab Vessel Permit.

(b) Application and Fee.

A biennial Dungeness Crab Trap Limit Permit may be issued to any person who has a valid Dungeness crab vessel permit that has not been suspended or revoked. For issuance of a permit, all applications and fees, as specified in Section 705, shall be received by the department at the address specified on the application. The fee for a Dungeness Crab Trap Limit Permit shall be \$1,000.00.

Note: Authority cited: 8276.5, Fish and Game Code.

Reference: Section 8276.5, Fish and Game Code.

Section 132.4 Title 14, CCR, is ADDED to read:

Section 132.4. Replacement Procedures for Lost Dungeness Crab Department Issued Buoy Tags.

Dungeness crab department issued 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 permit holder began the Dungeness crab season, a maximum number of replacement buoy tags may be issued as follows:

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

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- (2) ~~The permit holder shall submit an affidavit, identified in Section 705, In-Season Replacement Dungeness Crab Buoy Tag Affidavit FG1303 (Rev.01/13) signed under penalty of perjury by the Dungeness crab permit holder to the department's License and Revenue Branch. The affidavit shall include the following information:~~
- (A) ~~The number of replacement buoy tags requested.~~
- (B) ~~Payment of the nonrefundable replacement tag fee for each in-season replacement buoy tag, as identified in Section 705. The fee for each tag shall be \$1.00.~~
- (C) ~~Payment of the Replacement Processing Fee identified in Section 705 established pursuant to subdivision 1050(e) of the Fish and Game Code.~~
- (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 permit holder shall submit an affidavit, identified in Section 705, a Between-season Replacement Dungeness Crab Buoy Tag Affidavit FG1302 (Rev.01/13), signed under penalty of perjury by the Dungeness crab permit holder, 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 the following information:~~
- (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 gear or 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.~~
- (F) ~~Payment of the nonrefundable fee for each buoy tag, as identified in Section 705. The fee for each tag shall be \$1.00.~~
- (G) ~~Payment of the Replacement Processing Fee identified in Section 705 established pursuant to subdivision 1050(e) of the Fish and Game Code.~~
- (H) (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 department issued buoy tags are lost or destroyed due to circumstances beyond the control of the permit holder.~~
- (2) ~~The permit holder shall submit a written request signed under penalty of perjury by the permit holder 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) ~~Confirmation~~ ~~A statement confirming that the originally issued buoy tags cannot be recovered.~~
- (C) ~~The location and date where lost gear or 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 department issued buoy tags.~~
- Note: Authority cited: Section 8276.5, Fish and Game Code.
Reference: Section 8276.5, Fish and Game Code.

Section 132.5 Title 14, CCR, is ADDED to read:

Section 132.5. Appeal of Dungeness Crab Trap and Buoy Tag Allocations and Deadlines.

(a) Appeal.

- ~~(1) An individual permit holder may request an appeal of a their Dungeness crab trap and buoy tag allocation by submitting the request to the department's License and Revenue Branch, 1740 N. Market Blvd., Sacramento, CA 95834, director along with the nonrefundable processing fee identified in section 705. The request for an appeal shall be postmarked no later than March 31, 2014. The department shall not accept a request for an appeal that is postmarked after this date.~~
- ~~(A) An appeal application to revise upward to increase a Dungeness crab trap and buoy tag allocation shall be submitted to the department in the form of a notarized letter, and shall include the nonrefundable filing fee of \$3,044.00, as specified in Section 705. The application appeal shall include a statement from the permit holder that identifies the tier to which the permit holder wants to be transferred and that the permit holder's decision is permanent and shall not be revoked or canceled. The application appeal shall include evidence to document the circumstances for appeal, including 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. Within 12 months of the postmarked date on a request for an appeal the department shall submit a written request to the Office of Administrative Hearings (OAH) to set a hearing. A party may request judicial review by filing a petition for writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure within 30 days from the date of service (postmark) of the decision.~~
- ~~(B) An application to decrease a Dungeness crab trap and buoy tag allocation shall be submitted to the department in the form of a notarized letter, and shall include the nonrefundable filing fee as specified in Section 705. The application shall include a statement from the permit holder that identifies the tier to which the permit holder wants to be transferred and that the permit holder's decision is permanent and shall not be revoked or canceled. Any modification to the Dungeness crab trap and buoy tag allocation that results from an appeal is permanent for the duration of the Dungeness crab trap limit program.~~
- ~~(2) Within 12 months of the postmarked date on a request for an appeal the department shall submit a written request to the Office of Administrative Hearings (OAH) to set a hearing. Notwithstanding Government Code Section 11508, the hearing shall be held at the Sacramento, California office of OAH and shall follow the formal administrative adjudication rules described in Government Code Section 11500 et seq. unless the parties and the administrative law judge hearing the appeal agree to conduct the hearing pursuant to another hearing procedure described in the Administrative Procedure Act (Government Code Section 11340 et seq.). The decision issued by the administrative law judge shall constitute the final administrative decision.~~
- ~~(3) A party may request judicial review by filing a petition for writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure within 30 days from the date of service (postmark) of the decision.~~
- ~~(B) An appeal to revise downward to decrease a Dungeness crab trap and buoy tag allocation shall be submitted to the department in the form of a notarized letter and shall include the nonrefundable filing fee of \$250.00. The appeal shall include a statement from the permit holder that identifies the tier to which the permit holder wants to be transferred and that the permit holder's decision is permanent and shall not be revoked or canceled. Any modification to the Dungeness crab trap and buoy tag allocation that results from an appeal is permanent for the duration of the Dungeness crab trap limit program. An appeal to revise downward shall be decided by the department within 12 months of the postmarked date on a request for an appeal to revise downward.~~
- ~~(C) Any Dungeness crab permit holder requesting an appeal may apply to the administrative law judge for a waiver of the appeal fees. In making the determination, the administrative law judge may only consider medical hardship or military service occurring during the tier qualifying window period of November 15, 2003, through July 15, 2008.~~

Note: Authority cited: Section 8276.5, Fish and Game Code.
Reference: Section 8276.5, Fish and Game Code.

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~~Section 705 is AMENDED to read:~~

~~Section 705 Commercial Fishing Applications, Permits, Tags and Fees.~~

[Existing Text]

(d) Dungeness Crab	Fees (US\$)	Processing Fees (US\$)
(1) 2013-2014 Appeal Trap Tag Allocation Increase		3044.00
(2) 2013-2014 Appeal Trap Tag Allocation Decrease		2037.50
(3) 2013-2015 Biennial Buoy Trap Tag	5.00	
(4) 2013-2015 Biennial Crab Trap Limit Permit	1,000.00	
(5) 2013-2014 In-Season Replacement Dungeness Crab Buoy Tag Affidavit (FG 1303 (now 05/12) incorporated by reference herein)	1.00	0.25
(6) 2014 Between-Season Replacement Dungeness Crab Buoy Tag Affidavit (FG 1302 (now 05/12) incorporated by reference herein)	1.00	0.25

~~(e)~~ (d) Pursuant to the provisions of Section 699, Title 14, the department shall annually adjust the fees of all license, stamps, permits, tags, or other entitlement required by regulations set forth in this section.

Note: Authority cited: Sections 713 and 1050, ~~1050, and 8276.5,~~ Fish and Game Code.

Reference: Sections 713 and 1050, ~~1050, and 8276.5,~~ Fish and Game Code.