

# RESUBMITTAL

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW  
**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

(See instructions on reverse)

For use by Secretary of State only

ENDORSED FILED  
IN THE OFFICE OF

2013 MAR 27 PM 1:10

*Debra Bowen*  
DEBRA BOWEN  
SECRETARY OF STATE

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2012 0626-09</b>	REGULATORY ACTION NUMBER <b>2013-0220-01 SR</b> 2013 FEB 20 PM 12:11	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

OFFICE OF  
ADMINISTRATIVE LAW

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY  
Department of Fish and Wildlife

AGENCY FILE NUMBER (if any)

### A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Dungeness Crab Trap Limit Program	TITLE(S) 14	FIRST SECTION AFFECTED 132.1	2. REQUESTED PUBLICATION DATE July 6, 2012
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Peter Kalvass	TELEPHONE NUMBER (707) 964-9080	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER <b>2012-27-2</b>	PUBLICATION DATE <b>7-6-2012</b>

### B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Dungeness Crab Trap Limit Program	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2012 0626-09, 2012 1030 025
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT 132.1, 132.2, 132.3, 132.4, 132.5
AMEND
REPEAL
TITLE(S) 14

3. TYPE OF FILING
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)  
Modified 132.1 Sept. 21-Oct. 8, 2012. Modified 132.1 - 132.5 and included Supplemental Statement of Reasons Jan. 20-Feb. 4, 2013

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____

7. CONTACT PERSON Peter Kalvass	TELEPHONE NUMBER (707) 964-9080	FAX NUMBER (Optional) (707) 964-0642	E-MAIL ADDRESS (Optional) peter.kalvass@wildlife.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Charlton H. Boham</i>	DATE 2/14/13
TYPED NAME AND TITLE OF SIGNATORY Charlton H. Boham, Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 27 2013

Office of Administrative Law

State of California  
Department of Fish and Wildlife  
Title 14, California Code of Regulations  
Adopt Sections 132.1-132.5  
FINAL TEXT

Section 132.1. Dungeness Crab Trap Tags, 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 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 the trap owner's telephone number. 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 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 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 \$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 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 subdivision (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 subdivision (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 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.

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

Reference: Section 8276.5, Fish and Game Code.

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 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 commercial Dungeness crab trap(s) of another permitted Dungeness crab vessel that 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 subdivisions (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.

(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.

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

(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.

(F) Under a waiver granted by the department, retrieval of more than six (6) Dungeness crab traps to shore by another Dungeness crab permitted vessel is allowed if:

1. The vessel is incapacitated due to a major mechanical failure or destroyed due to fire, capsizing, or sinking; or

2. Circumstances beyond the control of the permitholder 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. Biennial Dungeness Crab Trap Limit Permit.

(a) Effective Date. Beginning with the 2013 Dungeness crab season, a person who purchases a valid Dungeness crab vessel permit shall also purchase a valid biennial Dungeness Crab Trap Limit Permit along with all of the buoy tags for that permit holder's tier to take Dungeness crab for commercial purposes using trap gear; otherwise, the Dungeness crab vessel permit shall be void.

(b) 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. 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. 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 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>

(2) The permit holder shall submit an In-Season Replacement Dungeness Crab Buoy Tag Affidavit (FG1303, rev. 1/13), signed under penalty of perjury by the Dungeness crab permit holder, 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 permit holder shall submit a Between-season Replacement Dungeness Crab Buoy Tag Affidavit (FG1302, rev. 1/13), signed under penalty of perjury by the Dungeness crab permit holder, to the department's License and Revenue Branch on or before August 15<sup>th</sup> 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 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) 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.

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

Reference: Section 8276.5, Fish and Game Code.

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

##### (a) Appeal.

- (1) A permit holder may request an appeal of 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. 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 to revise upward 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. 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. The 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 appeal to revise downward 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. 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.



# BETWEEN-SEASON REPLACEMENT DUNGENESS CRAB BUOY TAG AFFIDAVIT

Name	Permit#	Tier
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**Circle buoy tag numbers that need to be replaced.**

1	11	21	31	41	51	61	71	81	91
2	12	22	32	42	52	62	72	82	92
3	13	23	33	43	53	63	73	83	93
4	14	24	34	44	54	64	74	84	94
5	15	25	35	45	55	65	75	85	95
6	16	26	36	46	56	66	76	86	96
7	17	27	37	47	57	67	77	87	97
8	18	28	38	48	58	68	78	88	98
9	19	29	39	49	59	69	79	89	99
10	20	30	40	50	60	70	80	90	100

101	111	121	131	141	151	161	171	181	191
102	112	122	132	142	152	162	172	182	192
103	113	123	133	143	153	163	173	183	193
104	114	124	134	144	154	164	174	184	194
105	115	125	135	145	155	165	175	185	195
106	116	126	136	146	156	166	176	186	196
107	117	127	137	147	157	167	177	187	197
108	118	128	138	148	158	168	178	188	198
109	119	129	139	149	159	169	179	189	199
110	120	130	140	150	160	170	180	190	200

201	211	221	231	241	251	261	271	281	291
202	212	222	232	242	252	262	272	282	292
203	213	223	233	243	253	263	273	283	293
204	214	224	234	244	254	264	274	284	294
205	215	225	235	245	255	265	275	285	295
206	216	226	236	246	256	266	276	286	296
207	217	227	237	247	257	267	277	287	297
208	218	228	238	248	258	268	278	288	298
209	219	229	239	249	259	269	279	289	299
210	220	230	240	250	260	270	280	290	300

301	311	321	331	341	351	361	371	381	391
302	312	322	332	342	352	362	372	382	392
303	313	323	333	343	353	363	373	383	393
304	314	324	334	344	354	364	374	384	394
305	315	325	335	345	355	365	375	385	395
306	316	326	336	346	356	366	376	386	396
307	317	327	337	347	357	367	377	387	397
308	318	328	338	348	358	368	378	388	398
309	319	329	339	349	359	369	379	389	399
310	320	330	340	350	360	370	380	390	400

401	411	421	431	441	451	461	471	481	491
402	412	422	432	442	452	462	472	482	492
403	413	423	433	443	453	463	473	483	493
404	414	424	434	444	454	464	474	484	494
405	415	425	435	445	455	465	475	485	495
406	416	426	436	446	456	466	476	486	496
407	417	427	437	447	457	467	477	487	497
408	418	428	438	448	458	468	478	488	498
409	419	429	439	449	459	469	479	489	499
410	420	430	440	450	460	470	480	490	500

