

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 205, 265, 270, 275, 713, 1050, 1053.1, 7075, 7078 and 7149.8 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205, 265, 270, 275, 713, 1050, 1053.1, 1055.1, 7050, 7055, 7056 and 7149., of said Code, proposes to amend sections 29.80, 29.85 and 701, Title 14, California Code of Regulations, relating Recreational Crab Trap Fishery Marine Life Protection Measures.

Informative Digest/Policy Statement Overview

Current regulations for the recreational take of rock crab and Dungeness crab specify seasons, size limits, bag and possession limits, closed fishing areas, and gear restrictions. Like most recreational fisheries, a recreational fishing license is the only license required to participate in recreational crab fishing. In addition to traps, crabs can also be taken recreationally by hand, crab loop traps (snares), or hoop nets. Individuals are generally not allowed to operate a trap owned by another person unless they have in possession written permission from the owner.

Individual fishermen may fish using their own gear, or may join a scheduled fishing trip on a Commercial Passenger Fishing Vessel (CPFV). CPFVs take customers on fishing trips and provide fishing gear for use by their clients or passengers. Current regulations limit the number of crab traps used to take Dungeness crab by a CPFV to 60 and specify that the commercial boat registration number of the CPFV must be affixed to each trap and trap buoy deployed by that vessel. Current regulations specify that traps not operated from CPFVs must be marked with buoys with the operator's GO ID number.

There is currently no limit to how many traps an individual may deploy, no required service interval (how often traps must be raised, cleaned and emptied), and no other buoy or trap marking requirements for recreational crab fishing.

The Fish and Game Commission (Commission) and the Department of Fish and Wildlife (Department) are proposing to amend sections 29.80, 29.85, and 701, Title 14, California Code of Regulations (CCR). The proposed regulatory changes would be the first step in addressing entanglement risk posed by the recreational crab fishery in California towards species listed under the federal Endangered Species Act (ESA). Between 2014 and 2019, three Humpback whale entanglements were attributed to the recreational crab fishery in California. The proposal would also allow the Department to gather essential fishery information.

The fishing gear responsible for entanglement could not be identified in 44% of all confirmed entanglements between 1982 and 2017, and the recreational crab fishery may be responsible in some of these instances. This uncertainty, along with the scarcity of essential fishery information, makes development of mitigation measures very difficult.

The proposed regulations would establish some restrictions to minimize entanglement risks as well as allow the state to collect crucial information that would contribute to future management. The proposed regulations include the following provisions:

- **Enhanced Gear Marking:** Proposed subsection 29.80(c)(3), Title 14, CCR, would require all recreational crab traps be marked with a main buoy that is at least 5 inches in diameter and 11 inches in length and that a red marker buoy that is 3 inches in diameter and 5 inches in length be attached no more than three feet from the main buoy. Current regulation requiring buoy marking, and in the case of CPFV's, trap marking, would be consolidated in this subsection.
- **Service Interval:** Proposed subsection 29.80(c)(5), Title 14, CCR, would establish a maximum service interval of 9 days, weather conditions at sea permitting, and would prohibit abandoned traps.
- **Trap Limit:** Proposed subsection 29.80(c)(6), Title 14, CCR, would establish an individual trap limit of 10 traps. The current 60-trap limit for Commercial Passenger Fishing Vessels (CPFVs) targeting Dungeness crab will be moved from subsection 29.85(a)(4) to this subsection and will apply to CPFVs targeting any crab. The proposed regulation would allow an individual to service up to 10 additional traps if they possess written permission from the operator(s) of the additional traps whose gear are identified in accordance with subsection 29.80(c)(3).
- **Director Authority:** Proposed subsection 29.80(c)(7), Title 14, CCR, would provide authority for the Director of the Department, after consulting with the President of the Commission, to delay the fishery opener or close the season early in ocean waters of the state when the concentrations of Humpback whales, Blue whales, or Pacific Leatherback sea turtles exceed thresholds established in the Risk Assessment and Mitigation Program (Section 132.8, Title 14, CCR). Starting at least 5 days in advance of the opening of the recreational Dungeness crab fishing season, the Director shall, on at least a monthly basis until the season opens statewide and March 1 through June 15, evaluate and respond to risk. Any delay or closure could apply statewide or by zone(s). The proposed regulation provides that before implementing a delay or closure, the recreational crab trap fishery will be given at least 5-days' notice through a Director's declaration on the Department's "Whale Safe Fisheries" webpage (<https://wildlife.ca.gov/Conservation/Marine/Whale-Safe-Fisheries>). In addition, the Director will notify the Commission of any actions taken and request the Commission schedule a public discussion of any such action at the next regularly-scheduled Commission meeting. References to this authority will be added to subsections 29.85(b)(2) and (c)(1).
- **Trap Validation Program:** Proposed subsections 29.85(b) and 701(h), Title 14, CCR, would establish a "Recreational Crab Trap Validation" program that would require those individuals who fish for crabs with recreational crab traps to purchase an annual validation. A small fee of \$2.25 would be required for each validation.

The proposed regulatory package also includes clarifying, organizational and non-substantive edits to sections 29.80, 29.85, and 701, Title 14, CCR.

Benefits of the Regulations

The proposed regulation would help reduce marine life entanglement caused by the recreational crab fishery. It would also establish a framework by which the Commission and the Department can collect the requisite information to better manage the fishery to further reduce entanglement and to better meet the state's fishery management goals.

Consistency and Compatibility with Existing Regulations

Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated authority to the Commission to promulgate sport fishing regulations (Fish and Game Code sections 200, 205, 315, and 316.5). Commission staff has searched the California Code of Regulations and has found no other state regulations that address the recreational take of crabs using trap gear. The Commission has reviewed its own regulations and finds that the proposed regulations are consistent with other recreational fishing regulations and marine protected area regulations in Title 14, CCR, and therefore finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Public Participation

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing to be held on Wednesday, October 14, 2020 at 8:30 a.m., or as soon thereafter as the matter may be heard. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing to be held on Wednesday, December 9, 2020 at 8:30 a.m., or as soon thereafter as the matter may be heard. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899.

It is requested, but not required, that written comments be submitted on or before November 30, 2020 at the address given below, or by email to FGC@fgc.ca.gov. **Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on December 4, 2020.** All comments must be received no later than December 9, 2020, during the webinar/teleconference hearing. If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244-2090.

Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikethrough format can be accessed through the Commission website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller-Henson, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the regulatory process to Melissa Miller-Henson or Sherrie Fonbuena at FGC@fgc.ca.gov or at the preceding address or phone number. **Senior Environmental Scientist Specialist, Ryan Bartling, Department of Fish and Wildlife, (415) 761-1843 or Ryan.Bartling@wildlife.ca.gov**, has been designated to respond to questions on the substance of the proposed regulations.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 265 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in sections 11343.4, 11346.4, 11346.8 and 11347.1 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Assessment

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the proposed regulations are for a recreational marine fishery and are not anticipated to change the level of fishing activity. CPFVs that take fishers on crab fishing trips would be required to attach additional buoys to crab trap lines at a cost of \$4.00 per buoy for up to the maximum 60 traps per vessel, resulting in industry costs of \$15,360 in initial costs and approximately \$7,680 in subsequent years to replace lost or damaged buoys. The additional costs for CPFVs to purchase marker buoys is not anticipated to be significant because these costs are a very small share of CPFV operating costs and would not change procedure. As a result of fishing season closures or delays, CPFV operations could be impacted depending on the percentage of their group fishing trips that are solely or predominantly for crab trapping. Vessels that pursue multiple species could more readily shift effort away from trap-taken crabs should crab season delays or closures occur. These impacts are not anticipated to be more than those due to the typical season variation due to weather and other unknown influences.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California because the proposed regulations are not anticipated to affect the volume of recreational crab trapping activity nor result in significant costs to CPFVs that serve recreational crab trappers.

The Commission does not anticipate any benefits to the health and welfare of California residents or to worker safety.

The Commission anticipates benefits to the state's environment by reducing the potential for marine life entanglement in recreational fishing gear.

(c) Cost Impacts on a Representative Private Person or Business:

Recreational crab fishers would be required to purchase a \$2.25 Recreational Crab Trap Validation annually to participate in any crab trap fishery. Fishers may also incur costs for up to ten buoys at approximately \$4.00 each if they elect to fish the maximum number of traps. The proposed changes are not expected to change the level of fishing activity. CPFVs that take individual fishers on crab fishing trips would be required to attach additional buoys to crab trap lines at a cost of \$4.00 per buoy for up to the maximum 60 traps, summing to \$240 in initial costs and approximately \$120 in subsequent years to replace lost or damaged buoys.

The proposed regulation also includes the provision of authority for the Director of the Department to take action to reduce the risk of marine life entanglement. This component of the regulation is not anticipated to have cost impacts to individuals. However, CPFV operations could be impacted depending on the percentage of their group fishing trips that are solely or predominantly for crab trapping. Vessels that pursue multiple species could more readily shift effort away from trap-taken crabs should crab season delays or closures occur.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The proposed regulations are anticipated to introduce some start-up and ongoing implementation and enforcement costs that will be re-covered with the proposed Recreational Crab Trap validation program. An estimated additional \$13,500 in validation revenue is anticipated to be collected by the Department. The Commission does not anticipate any savings to State agencies or costs/savings in federal funding to the State.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

(f) Programs Mandated on Local Agencies or School Districts:

None.

(g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

(h) Effect on Housing Costs:

None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, 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.

FISH AND GAME COMMISSION

Dated: September 15, 2020

Melissa Miller-Henson
Executive Director