

Gear Retrieval Program: Proposed Concept and Regulations



California Department of Fish and Wildlife

Marine Region

DCTF Meeting

June 5-6, 2018

Section 132.7, Title 14, CCR, is added to read as follows:

§ 132.7 Lost or Abandoned Dungeness Crab Trap Gear Retrieval Program.

(a) Dungeness crab traps (“traps”) left in the ocean after the close of the commercial Dungeness crab season are declared to be lost or abandoned and subject to retrieval under the terms of this Section and subject to fees to recover the cost of the retrieval and administration.

(b) Lost or Abandoned Dungeness Crab Trap Gear Retrieval Permit Required. Pursuant to Section 9002.5 of the Fish and Game Code, the department may grant a Lost or Abandoned Crab Trap Gear Retrieval Permit (“Retrieval Permit”) to aid in the cleanup of lost or abandoned traps in state waters after the close of the commercial Dungeness crab season under the requirements of the Gear Retrieval Program.

(c) Retrieval Permit Application.

(1) An applicant for a Retrieval Permit shall only be:

(A) a charitable organization within the meaning of 26 U.S.C. § 501(c)(3);

(B) a sport or commercial fisherman association; or,

(C) a local government entity in California.

(2) Applications for a Retrieval Permit shall be made available online and at department license sales offices.

(A) Applications shall be made available each year [between May 1 and September 30]

(B) The applicant shall submit a non-refundable Lost or Abandoned Trap Gear Retrieval Permit Application Fee, at the time of application, as specified in subsection 705(c)(8).

(c) Retrieval Permit Application.

(3) Lost or abandoned traps may only be retrieved by specific individuals designated by a Retrieval Permittee on its Retrieval Permit Application (“Designated Agent”).

(4) The department may issue a Retrieval Permit to an applicant (“Retrieval Permittee”) when it determines that the following conditions have been met:

(A) Each Designated Agent can competently retrieve lost or abandoned traps as demonstrated by:

1. Proficiency in handling vessels for commercial operations, such as possession of an Operator of Uninspected Passenger Vessels License
2. Proficiency in handling trap gear, such as history in a commercial trap fishery
3. Each Designated Agent who is a commercial fishing license holder is in good standing

(B) The applicant is competent at overseeing designated agents and the retrieval program

1. The competence of an applicant at overseeing designated agents shall be determined on a case-by-case basis
2. Applicants that have participated in gear retrieval pilot programs is presumed to be competent

(d) Trap Retrieval Permit Operations.

(1) The Designated Agents of a Retrieval Permittee may retrieve lost or abandoned traps from **July 16 through September 30**. In cases when a season is extended pursuant to Fish & Game Code 8277, the retrieval period shall begin the day after the extended season ends through **September 30** of that year.

(2) A Retrieval Permittee shall notify the department of every retrieval operation by its designated agent(s) at least 48 hours prior to that operation by email at DungenessCrabTrap@wildlife.ca.gov.

(d) Trap Retrieval Permit Operations.

(3) Each Designated Agent shall keep in its possession the Retrieval Permit or a legible photocopy of the Retrieval Permit he/she is operating under while retrieving traps in California state waters.

(4) Trap Retrieval Logbooks. Each Retrieval Permittee shall complete and submit an accurate record of all trap retrieval activities on a form (DFW 1059; "Retrieval Logbook", incorporated herein by reference).

(A) The completed records shall be sent to the department's address as specified on the form by October 31, or the next business day of each year if October 31 of that year falls on a Saturday or Sunday.

(B) The form shall identify any Dungeness crab vessel permit holder that did not pay the trap fee directly to the Retrieval Permittee and would require the department to pursue a Lost or Abandoned Trap Gear Retrieval Fee on a per trap basis as specified in subsection 705(c) ("department trap fee").

(d) Trap Retrieval Permit Operations.

(5) The department may enter and conduct unannounced visits to inspect facilities and vessels of a trap Retrieval Permittee or a Designated Agent of a Retrieval Permittee or that are used as part of the trap retrieval operation. The department may also inspect, audit, or copy any permit, license, book, or record required to be kept under these regulations at any time.

(e) A Retrieval Permit may be suspended, revoked, or canceled by the department for, but not limited to, the following reasons:

(1) Violation of any provision of these regulations, any California Code, or the terms of the Retrieval Permit by the Retrieval Permittee or any of its Designated Agents.

(2) Tampering with recovered trap, including removing crab trap tags, buoys or other markings prior to documenting the trap gear.

(3) Failure to keep and submit required logbooks.

(4) Incompetence of any designated agent.

(f) Dungeness Crab Vessel Permit-holder Trap Gear Retrieval Fee.

(1) The Dungeness crab vessel permit holder will be liable to pay a trap fee on a per trap basis.

(A) As specified in Section 9002.5, a Retrieval Permittee may contact the Department in order to help identify a Dungeness crab vessel permit holder for any trap retrieved under the program.

(2) Permittee may refuse to return a retrieved trap to its owner until its owner has paid for the cost of the retrieval.

(g) Reimbursement. The Department shall reimburse the Retrieval Permittee **\$75** for each trap fee that is unpaid by October 31 as documented by the Retrieval Logbook.

(h) Notification and Deadline of Department Trap Fee and Non-Renewal of Dungeness crab Vessel Permit.

(1) By or before **November 15**, the department shall notify all Dungeness crab vessel permit holders that were identified on any Retrieval Logbooks received by the Department as owing trap fees that they are subject to the department trap fee as specified in 705(c)(9).

(2) By **January 31**, any outstanding department trap fee will be considered late by the Dungeness crab vessel permit holder and the Department shall suspend the renewal or transferability of their Dungeness crab vessel permit. The suspension shall remain in effect until the permit holder has paid the outstanding fee. A Dungeness crab vessel permit may be permanently revoked if the permit holder has failed to pay the department trap fee by March 31 of the following year.

(h) Notification and Deadline of Department Trap Fee and Non-Renewal of Dungeness crab Vessel Permit.

(3) A Dungeness crab vessel permit holder may request an exemption from a department trap fee or renewal suspension when circumstances beyond the permit holder's control prevented the retrieval of its traps prior to the close of the season, these may include:

(A) vessel mechanical failure, fire, capsizing, or sinking, or

(B) the owner is incapacitated by medical hardship, or

(C) the owner was called to mandatory military service.

(4) Request for exemptions in a given year shall be postmarked prior to the Dungeness crab season closure date of that year and submitted to the department's License and Revenue Branch, 1740 N. Market Blvd. Sacramento, CA 95834.

Note: Authority cited: Section 9002.5, Fish and Game Code

Reference: Sections 9002.5, Fish and Game Code

Section 705, Title 14, CCR, is amended to read as follows:

§ 705. Commercial Fishing Applications, Permits, Tags and Fees.

... [No changes to subsections (a) through (b)]

(c) Tags and Miscellaneous

... [No changes to subsections (c)(1) through (c)(7)]

(8) Lost or Abandoned Trap Gear Retrieval Permit Application Fee 100.00

(9) Lost or Abandoned Trap Gear Retrieval Fee (per trap) 300.00

... [No changes to subsection (d)]

Note: Authority cited: Sections 713 ~~and~~ 1050, and 9002.5, Fish and Game Code.

Reference: Sections 713 ~~and~~ 1050, and 9002.5, Fish and Game Code.

Next Steps

- Need updated statutory authority established by SB1309
- DCTF recommendation
- Then Department will submit rulemaking (emergency)

Revised Section 9002.5 in SB1309

- (a) Notwithstanding Section 9002, the department, in consultation with the Dungeness crab task force, shall establish a retrieval program to provide for the retrieval of lost or abandoned commercial Dungeness crab traps by June 30, 2019.
- (b) The retrieval program developed pursuant to subdivision (a) shall be consistent with all of the following:
- (1) The department shall establish a retrieval permit that grants a person who obtains a retrieval permit the authority to retrieve Dungeness crab traps located in ocean waters belonging to another person without written permission from that person during the closed season of the Dungeness crab commercial fishery, as described in Section 8276. The department may establish any qualifications it deems necessary for a person to obtain a retrieval permit. The department shall require a permit fee in an amount necessary to fully recover, but not exceed, all reasonable administrative and implementation costs to the department of the retrieval program.
 - (2) Notwithstanding Chapter 4 (commencing with Section 2080) of Title 6 of Part 4 of Division 3 of the Civil Code or any other law, any Dungeness crab trap retrieved under the authority of a retrieval permit shall become the property of the retrieval permitholder.
 - (3) The department shall require a retrieval permitholder to notify the former trap owner of the retrieval of a Dungeness crab trap and shall offer to sell the trap to the former owner for a reasonable recovery fee, as determined by the retrieval permitholder, based on the cost of trap retrieval and storage of the trap. The department shall impose a per-trap fee on any former trap owner who refuses to pay the recovery fee to the retrieval permitholder and shall use the proceeds from this fee to reimburse the retrieval permitholder for the reasonable cost of trap retrieval, storage, and disposal.
 - (4) Notwithstanding Section 8022, the department may release contact information to a retrieval permitholder for purposes of the retrieval program under terms and conditions as the department deems necessary to preserve the confidentiality of the information released. Any release of information pursuant to this section shall not constitute a waiver of any applicable exemptions from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).
 - (5) The department may deny an application for renewal or transfer of a Dungeness crab vessel permit until the applicant pays any fees imposed pursuant to paragraph (3).
 - (6) The department shall submit the proposed retrieval program developed pursuant to this section to the Dungeness crab task force for review, and shall not implement the retrieval program until the task force has had 60 days or more to review the proposed retrieval program and recommend any proposed changes. The director may implement the retrieval program earlier than 60 days after it is submitted to the Dungeness crab task force for review, if recommended by the task force.

Revised Section 9002.5 in SB1309

(c) The department shall establish the retrieval program through an emergency regulation. The adoption of any regulation pursuant to this section shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, and general welfare.

(d) This section shall become inoperative on April 1, 2029, and, as of January 1, 2030, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2030, deletes or extends the dates on which it becomes inoperative and is repealed.