



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND GAME
Marine Region
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EDMUND G. BROWN, Jr. Governor
CHARLTON H. BONHAM, Director



March 30, 2012

Dungeness Crab Task Force Members

Subject: Draft Regulations, Dungeness Crab Trap Limit Program

Dear Members:

Section 8276.5 of SB 369 requires the Department of Fish and Game (DFG), in consultation with the Dungeness crab task force (DCTF), to adopt a Dungeness crab trap limit program for all California permits by **March 31, 2013**. This program will regulate the amount of trap gear deployed within seven tiers of trap limits based on landings receipts between November 15, 2003 and July 15, 2008. The program is intended to take effect by the 2013-2014 Dungeness crab season.

DFG has drafted the following regulations for the Dungeness crab trap limit program and modified them based on input from the DCTF March 12, 2012 meeting. Additions and amendments from the previous draft are in red font. While all DCTF input is welcome, DFG staff would appreciate the DCTF's focused feedback on the following:

- **Waiver sections** – Two options are presented for your review and consideration.
- **Replacement procedures for lost buoy tags** – In-Season and Between-Season replacement and Catastrophic Loss procedures
- **Appeal** – Statements included in appeal process to either move up or down tier(s) and that the decision is permanent
- Are there any remaining elements of the Dungeness crab trap limit program that you feel have not been addressed in these proposed regulations?

The DCTF will have an opportunity to collectively discuss and finally approve the draft regulations at its meeting on April 2, 2012. DFG staff will be available at this meeting to address DCTF questions, as well as discuss DCTF ideas, feedback, and recommendations.

DCTF input and recommendations on the Dungeness crab trap limit program must be submitted to the DFG Director by May 1, 2012. Following the public comment period, the Director will submit the draft regulations to the Office of Administrative Law by October 1, 2012. The final Dungeness crab trap limit program regulations will be submitted to the Secretary of State by November 1, 2012 in order to meet the March 31, 2013 adoption deadline.

The Department appreciates the DCTFs commitment towards effective Dungeness crab fishery management, and we thank you for your contribution to implementing these important regulations.

Sincerely,

Tom Barnes
Environmental Program Manager, Marine Region

cc: DCTF Administrative Team, DCTF Project Team (OPC staff, DFG staff)

DRAFT DUNGENESS CRAB IMPLEMENTATION LANGUAGE (SB 369)
For Consideration by the Dungeness Crab Task Force (DCTF)
Prepared for DCTF Meeting on April 2, 2012
Will be located in Title 14, California Code of Regulations
Sections 132.1-132.5

(Note: new language in RED font)

Title 14

Section 132.1. Dungeness Crab Trap Tags, Department Issued 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 owner of the trap**. This tag is required on Dungeness crab traps on board 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 will be considered not in compliance, and shall not be used to take Dungeness crab for commercial purposes.

(b) Dungeness Crab Department Issued 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 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 shall mandate the information that is required to appear on these buoy tags. All of the buoy tags allocated to each 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.

- (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 when lawfully applying or removing tags on the person's own buoys and traps.
- (3) A Dungeness crab trap used in compliance with this section shall only be used for the commercial take of crab.

(c) Dungeness Crab Trap and 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 permitholder 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 permitholder 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 permitholder 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 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 subparagraph (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 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 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 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 cannot fish more Dungeness crab traps than the number of traps and buoy tags allocated to the vessel permit by the Dungeness crab trap limits as described in this section and in Section 8276.5(a)(1) of the Fish and Game Code.

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

No vessel shall possess, use, control, or operate any Dungeness crab trap without a department issued buoy tag assigned to that vessel except as provided for in Section 8280.7 of the Fish and Game Code and as follows:

- (a) Under a written waiver granted by the department to allow retrieval and transport to shore of another permitted Dungeness crab vessel's Dungeness crab traps and associated gear provided that:
 - (1) A permitted Dungeness crab vessel is either destroyed due to fire, capsizing, or sinking, or non-operational due to major mechanical failure. This shall require documentation from either a marine surveyor or law enforcement entity that supports claim of major mechanical failure;
 - (2) Circumstances beyond the control of the permitholder created undue hardship;
 - (3) Requests for a waiver shall be made in writing and submitted to department's License and Revenue Branch. Each permitholder is limited to one waiver request per fishing season.
 - (A) A written request for the waiver must be submitted, along with proof that the permitted vessel is lost, stolen, or destroyed in the form of a copy of the report filed with the United States Coast Guard or any other law enforcement agency or fire department investigating the loss. In the case of mechanical breakdown, the request shall include an estimate of the costs to repair the vessel from a marine surveyor or boat repair yard. The department shall not issue a waiver for a replacement vessel pursuant to this section if the permitted vessel was reported lost, stolen, destroyed, or damaged for fraudulent purposes.
 - (4) Any permitholder that is granted a waiver under this section shall not retain any crab when retrieving the Dungeness crab traps.
- (b) To accommodate recovery of lost or damaged traps, a Dungeness crab vessel may be allowed up to 6 traps without tags on board the vessel. Such traps may only be transported to shore.

OR

Title 14

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

- (a) No 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 crab trap(s) of another vessel which were lost, forgotten, damaged, abandoned or otherwise derelict; provided that:
 - (A) No more than six (6) such traps may be retrieved per trip.
 - (B) Crab from the retrieved trap(s) shall not be retained; and

- (C) Immediately upon retrieval of trap(s), the retrieving vessel operator must document in the retrieving vessel's logbook the date and time of trap retrieval, number of retrieved crab traps, location of retrieval, and retrieved trap owner identification information; and
- (D) Any retrieved crab trap(s) must be transported to shore during the same fishing trip that retrieval took place; or that:
- (E) During August 29 through October 31, an unlimited number of such traps may be retrieved per trip and transported to shore during the same fishing trip; or
- (F) Under a waiver granted by the Department to allow one time retrieval of permitted crab gear of more than six (6) traps to shore by another crab permitted vessel provided that:
 - (1) Vessel is incapacitated due to 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 must be in writing to the Department's License and Revenue Branch and a waiver approved and issued prior to retrieval.
 - (4) A copy of the waiver must be on board the vessel making the retrieval.
 - (5) The waiver may include limitations such as time period to conduct retrieval, landing prohibitions or any other criteria the department deems necessary.

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Section 132.3. Biennial Dungeness Crab Trap Limit Permit.

(a) Effective Date.

Beginning with the 2013 Dungeness crab season any person with a valid Dungeness crab vessel permit shall also have a valid biennial Dungeness crab Trap Limit Permit to take Dungeness crab for commercial purposes using trap gear. The permit shall be purchased at the same time as a Dungeness crab vessel permit.

(b) Application and Fee.

A 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.

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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, maximum number of replacement buoy tags may be issued as follows:

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

(2) The permitholder shall submit an affidavit, identified in Section 705, signed under penalty of perjury by the Dungeness crab permitholder 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.

(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 and all lost buoy tags shall be replaced with new buoy tags. The permitholder shall submit an affidavit, identified in Section 705, signed under penalty of perjury by the Dungeness crab permitholder, to the department's License and Revenue Branch. 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 number of buoy tags to be replaced.

(E) The number of each lost buoy tag to be replaced.

(F) Return all in-season replacement buoy tags with the affidavit.

- (G) Payment of the nonrefundable fee for each buoy tag as identified in Section 705.
- (H) Payment of the Replacement Processing Fee identified in Section 705 established pursuant to subdivision 1050(e) of the Fish and Game Code.
- (I) All in-season replacement buoy tags shall identified as lost become null and void upon signing of the declaration and remain so even if recovered at a later date. Any lost buoy tags that are recovered shall be immediately returned to the department's License and Revenue Branch with the affidavit.
 - (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 a permitted Dungeness crab vessel is either destroyed due to fire, capsizing, or sinking, or non-operational due to major mechanical failure.
 - (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 that the originally issued buoy tags cannot be recovered.
 - (C) The location and date where lost gear or buoy tags were last observed.
 - (D) A copy of the report filed with the United States Coast Guard or any other law enforcement agency or fire department investigating the loss along with proof that the permitted vessel is lost, stolen, or destroyed.
 - (E) In the case of mechanical breakdown, the request shall include an estimate of the costs and the time to repair the vessel from a marine surveyor or boat repair yard.

Title 14

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

(a) Appeal.

- (1) An individual may request an appeal of a Dungeness crab trap and buoy tag allocation by submitting the request to the director along with a fee covering all costs associated with the appeal process. The request for an appeal must 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 application 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 as specified in Section 705. **The application shall include a statement from the permitholder that identifies the tier to which the permitholder wants to be transferred and the permitholder's decision is permanent and shall not be revoked or canceled.** The application 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.

- (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 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 Hearing (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.

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

(a) Application	Permit Fees (US\$)	Processing Fees (US\$)
(d) Dungeness Crab		
(1) <u>2014 Appeal Tag Allocation</u>	<u>TBD</u>	
(2) <u>2013-2015 Biennial Buoy Trap Tag</u>	<u>5.00</u>	
(3) <u>2013-2015 Biennial Crab Trap Limit Permit</u>	<u>1,000.00</u>	
(4) <u>2013 Lost Dungeness Crab Buoy Tag Affidavit</u>	<u>TBD</u>	