

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 713, 1050, 5508, 7090, 7857, 8026 and 8282 of the Fish and Game Code and to implement, interpret or make specific sections 1050, 1052, 5508, 7050, 7051, 7055, 7056, 7058, 7090, 7850, 7857, 7881, 8026, 8031, 8040, 8041, 8042, 8043, 8046, 8047, 8051, 8250.5, 8275, 8281, 8282, 8284, 8834, 9000, 9001, 9001.79002, 9003, 9004, 9005, 9006, 9007, 9008 and 9011 of said Code, proposes to Add Section 126.1 and Amend subsection 125.1(c)(3) and Section 126, Title 14, California Code of Regulations, relating to Incidental Take Allowances for Crabs, other than the Genus Cancer, in Trap Fisheries.

Informative Digest/Policy Statement Overview

Under current law, commercial fishermen, with a Dungeness crab, rock crab or lobster permit, may incidentally take unlimited amounts of crabs not of the genus Cancer (non-Cancer crabs) when targeting Dungeness crab, rock crab, and lobster, with no limit on amount. Laws that specifically allow the incidental take of crab include subdivision 8284(c), Fish and Game Code (FGC), and subsection 125.1(c), Title 14, California Code of Regulations (CCR), which allow the take of non-Cancer crabs when targeting rock crab. Similarly, non-Cancer crabs may be taken incidentally in the lobster (subdivision 8250.5(b), FGC) and Dungeness crab (subdivision 8284(a), FGC) fisheries. The FGC provides a general definition of bycatch (incidental take) that does not give guidance on acceptable amounts (Section 90.5, FGC), but FGC and CCR sections on specific species and gear types do specify rules for retaining non-target species in some cases.

The proposed changes would amend the existing Section 126, which currently applies to the commercial take of Tanner crab. The title of 126 would be changed to "Commercial Take of Crabs not in the Genus Cancer in Trap Gear." Tanner crab (*Chioneocetes* spp.) are non-Cancer crabs, and existing regulations regarding this fishery would be shifted to new Section 126.1. The new Section 126 would provide a definition of crabs of the genus Cancer and institute limits to allowable incidental take of non-Cancer crabs when participating in other target invertebrate trap fisheries. Species in the family Lithodidae (box and king crabs) would be subject to a 25-pound possession and landing limit, while the sheep (spider) crab would be subject to a total allowable catch of 95,000 pounds. When possessing or landing species in the Lithodidae family, an equal or greater amount of the target species (rock crab, lobster, or Dungeness crab) must also be possessed or landed. Additionally, a requirement to bring non-Cancer crab, in the whole, ashore to be recorded on a landing receipt would be added.

The proposed regulatory change would amend subsection 125.1(c)(3), which details allowances for incidental take of other species when targeting rock crab. The incidental allowances would remain unchanged except for reference to the new subsection 126(b) specifying a limit on non-Cancer crabs.

Benefits of the regulations

The proposed regulation will benefit the environment in the sustainable management of non-Cancer crab species by prohibiting the overexploitation of several non-Cancer crab species before adequate management measures could be developed for dedicated targeted fisheries. The proposed regulation will also allow for development of an experimental gear permit program for box and king crab designed to conduct research on species biology and potential appropriate management measures.

Consistency and Compatibility with State Regulations

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. Statutes and regulations specifically allow the incidental take of crab other than the genus *Cancer* in commercial fisheries for rock crab (subdivision 8284(c), FGC, and subsection 125.1(c), Title 14, CCR), spiny lobster (subdivision 8250.5(b), FGC), and Dungeness crab (subdivision 8284(a), FGC). The Legislature has delegated authority to the Commission to regulate fisheries that the Director of the California Department of Fish and Wildlife determines are emerging fisheries (Fish and Game Code, Section 7090) as well as the power to regulate the commercial spiny lobster and rock crab trap fisheries (Fish and Game Code Section 8254 and 8282).

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Radisson Fresno Conference Center, 1055 Van Ness Avenue, Fresno, California, on Wednesday, October 17, 2018, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before 5:00 p.m. on October 4, 2018, at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed (to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244-2090), or emailed to the Commission office, must be received before 12:00 noon on October 12, 2018. All comments must be received no later than October 17, 2018, at the hearing in Fresno, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

Availability of Documents

The Initial Statement of Reasons, text of 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, Valerie Termini, 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 Valerie Termini or Jon Snellstrom at the preceding

address or phone number. **Julia Coates, Environmental Scientist, (805) 730-1328**, has been designated to respond to questions on the substance of the proposed Specifying Incidental Take Allowances for Crabs other than the Genus Cancer regulations. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at <http://www.fgc.ca.gov>.

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.

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 Businesses, 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 regulatory action will not increase compliance costs and will not substantially affect incidental take quantities.

- (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 significant impacts on the creation or elimination of jobs within the state, or the creation of new businesses or the elimination of existing businesses or the expansion of businesses because the proposed action will not significantly increase or reduce incidental take quantities for non-Cancer crab.

The Commission anticipates benefits to the environment in the sustainable management of non-Cancer crab species.

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

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

The proposed regulations may have adverse cost impacts to king and box crab

harvest revenue for a few fishermen who have historically landed more than the proposed 25-pound limit. The following summarizes the total statewide costs and benefits from this regulation and each alternative considered.

Regulation cost of \$71,077: These are potential cost impacts on individuals or businesses; these are minimal impacts to king and box crab harvest revenue (landed ex-vessel value) for a few fishermen who have historically harvested more than the proposed 25-pound limit.

Alternative 1 cost of \$107,445: These are potential cost impacts on individuals or businesses; these are minimal impacts to king, box and sheep crab harvest revenue (landed ex-vessel value) for a few fishermen who have historically harvested more than the alternate 100-pound limit for all non-cancer crab species.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (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:

Valerie Termini
Executive Director