

DFG Trap Limit Program Draft Regulations

- Section 8276.5 of SB 369 implements trap limits for Dungeness crab fishery starting with the 2013-2014 season
- Department of Fish and Game (DFG), in consultation with the Dungeness crab task force (DCTF), need to adopt a Dungeness crab trap limit program for all California permits by March 31, 2013
- We will introduce **5 New Sections**.
- These draft regulations would be incorporated in to California Code of Regulations, Title 14

Sec. 1 DFG Trap Limit Program Draft Regulations

- **Section 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.
- **2 Tags now required on each trap: Are the distinctions between tag types (trap and buoy) clear? Is there a way to make this language clearer?**

Sec. 1a. Dungeness Crab Trap Tags

(a) Dungeness crab trap tags shall be supplied by the owner of the Dungeness crab trap and shall contain the following information: the vessel name and the phone number of the operator of the vessel. 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.

Sec. 1b. Dungeness Crab Department Issued Buoy Tags

(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.

Sec. 1b. Dungeness Crab Department Issued Buoy Tags

- (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.

Sec. 1b. Dungeness Crab Department Issued Buoy Tags

- (3) It is unlawful to place, operate, or leave crab traps in the Pacific Ocean and bay or estuaries during the closed season, except that unbaited Dungeness crab traps with open release mechanisms may be left in the water for a period not to exceed 14 days following the closure of the Dungeness crab season.
- (4) It is prima facie evidence that a Dungeness crab trap used in compliance with this section is being used for the commercial take of Dungeness crab.
- **(3) A Dungeness crab trap used in compliance with this section shall only be used for the commercial take of Dungeness crab.**

Sec. 1c. Dungeness Crab Trap and Buoy Tag Allocations

(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:

<i>Tier Level</i>	<i>Maximum Crab Pot Allocation</i>	<i>Number of Permitholders Assigned</i>
<i>(A) Tier 1</i>	<i>500 buoy tags</i>	<i>55 highest landings</i>
<i>(B) Tier 2</i>	<i>450 buoy tags</i>	<i>55 with next highest</i>
<i>(C) Tier 3</i>	<i>400 buoy tags</i>	<i>55 with next highest</i>
<i>(D) Tier 4</i>	<i>350 buoy tags</i>	<i>55 with next highest</i>
<i>(E) Tier 5</i>	<i>300 buoy tags</i>	<i>55 with next highest</i>
<i>(F) Tier 6</i>	<i>250 buoy tags</i>	<i>Remaining permits with next highest that are greater than 5,000lbs</i>
<i>(G) Tier 7</i>	<i>175 buoy tags*</i>	<i>Permits and permits purchased with less than 5,000lbs</i>

*Tags in this tier are not transferable for the first two years of the program as described in Section 8276.5(a)(1)(G) of the Fish and Game Code

Sec. 1c. Dungeness Crab Trap and Buoy Tag Allocations

- (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 can not 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.

Sec. 2. DFG Trap Limit Program Draft Regulations

- **Section 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 trap tag assigned to that vessel except as provided for in Section 8280.7 of the Fish and Game Code and as follows:
- ***Are there any other circumstances to which a waiver should be issued? Should not be issued?***

Sec. 2a. Waivers to Retrieve Another Vessel's Dungeness Crab Traps

- (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 licensed marine surveyor or law enforcement entity that supports claim of major mechanical failure;
 - (2) Circumstances beyond the control of the permit holder created undue hardship;

Sec. 2a. Waivers to Retrieve Another Vessel's Dungeness Crab Traps

- 3) Requests for a waiver shall be made in writing and submitted to: Department of Fish and Game, 32330 North Harbor Drive, Fort Bragg, CA 95437 or by email to: DungenessCrab@dfg.ca.gov. Each permit holder 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 permit holder that is granted a waiver shall not retain any Dungeness crab when retrieving the Dungeness crab traps.

Sec. 3. DFG Trap Limit Program Draft Regulations

- **Section 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.
- ***After 2 years will this fee go down in price? Section 8276.5 (3)(B) states permit will “not be more than \$1,000” & (4) Department will provide annual accounting of all costs associated with the... program. Excess funds... shall be used to reduce the cost(s)***

Sec. 4 DFG Trap Limit Program Draft Regulations

- **Section 4. Replacement Procedures for Lost Dungeness Crab Department Issued Buoy Tags.**
- If the permit holder loses any Dungeness crab department issued buoy tags, they shall be replaced by the following procedures:

Sec. 4a. Replacement Procedures for Lost Buoy Tags

- (a) The tag holder shall provide all of the following to the department's License and Revenue Branch:
 - (1) An affidavit, specified in Section 705, signed under penalty of perjury by the Dungeness crab permit holder, containing 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 lost.
 - (E) The specific sequential number of each lost buoy tag.
 - (F) Payment of the nonrefundable replacement fee for each buoy tag as specified in Section 705.
- ***Are there any steps missing? How many crab traps are typically lost per fisherman per season?***

Sec. 4b. & c. Replacement

Procedures for Lost Buoy Tags

- (b) All buoy tags 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.
- (c) 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. The number of replacement buoy tags cannot exceed the trap allocation for the permit.

Sec. 4d. Replacement Procedures for Lost Buoy Tags

- (d) The department may waive the replacement fee when a permitted Dungeness crab vessel is either destroyed due to fire, capsizing, or sinking, or non-operational due to major mechanical failure. A written request must be submitted along with the affidavit, 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 along with proof that the permitted vessel is lost, stolen, or destroyed. 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.

Sec. 5a. DFG Trap Limit Program Draft Regulations

- **Section 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.

Sec. 5a. Appeal Process

- (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 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.

Sec. 5a. Appeal Process

- (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. 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.

Sec. 5a. Appeal Process

- (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.

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

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

DFG Trap Limit Program Draft Regulations - Task Force Feedback

Trap tags – is the distinction between tag types (trap and buoy) clear? Is there a way to make this language clearer?

Transferability of tags/permits – 2 year prohibition for Tier 7

Waivers to transport another's traps– are there any other circumstances to which a waiver should be issued? Should not be issued?

Biennial trap limit permits –

Replacement procedures for lost buoy tags – are there any steps missing? How many crab traps are typically lost per fisherman per season?

Appeal allocations and deadlines –

Overall –

Do these regulations accurately/sufficiently interpret the intent of SB 369?
Are there any elements of the Dungeness crab trap limit program that you feel have not been addressed in these proposed regulations?