

All Sunsetting Fish and Game Code Sections Concerning Dungeness Crab Fishery by April 1, 2019 (Comments in Red, Italics Font):

DIVISION 6. FISH [5500 - 9101], PART 3. COMMERCIAL FISHING [7600 - 9101], CHAPTER 2. Particular Varieties of Fish [8140 - 8599.4], ARTICLE 6. Crab [8275 - 8284]

8276.2 – Quality control Testing/Soft-shell delay procedures

Following a DCTF recommendation, this section was amended in 2012 to allow the sale of the crab meat top pay for vessel fuel and observers that conduct the testing, whereas before they could only donate crab meat.

The Tri-State Dungeness Crab Committee has expressed frustration about California's inflexibility to open the fishery outside of 15-day increments from Dec 1 onward (i.e. can only be delayed a total of 3 times until Dec 16, then Dec 31, then Jan 15) whereas WA and OR can move opener to any day after Dec 1 once crabs are ready, but generally use our start date to be consistent.

The DCTF agreed at the October 2014 DCTF meeting that they were not interested in adopting revised delay increments for season start.

(a) The director may order a delay in the opening of the Dungeness crab fishery after December 1 in Districts 6, 7, 8, and 9 in any year. The delay in the opening shall not be later than January 15 of any year.

(b) (1) On or about November 1 of each year, the director may authorize one or more operators of commercial fishing vessels to take and land a limited number of Dungeness crab for the purpose of quality testing according to a testing program conducted by, or on behalf of, the Pacific States Marine Fisheries Commission or an entity approved by the department.

(2) (A) The meat extracted from Dungeness crab tested pursuant to paragraph (1) may be sold by the entity approved by the department and revenues from that sale may be used for purposes of managing the testing program. Revenues shall be deposited in an account managed and overseen by the Pacific States Marine Fisheries Commission.

(B) For purposes of the testing program, the department shall develop guidelines after consulting with representatives of the California Dungeness crab industry, which shall include California delegates to the Tri-State Dungeness Crab Commission or members of the California Dungeness Crab Task Force, or both. The guidelines shall include the following:

(i) Suggested guidelines for the management of the funds received from, but not limited to, the sale of the crab meat pursuant to subparagraph (A), including the suggested guideline that funds in excess of the program costs may be donated for charitable purposes.

(ii) Guidelines for the testing program.

(iii) Guidelines that establish measures to track crab caught for purposes of the testing program, including, but not limited to, the guideline that all crab caught and sold for the testing program shall be canned.

(c) The director shall order the opening of the Dungeness crab season in Districts 6, 7, 8, and 9 on December 1 if the quality tests authorized in subdivision (b) indicate the Dungeness crabs are not soft-shelled or low quality. The entity authorized to conduct the approved testing program may test, or cause to be tested, crabs taken for quality and soft shells pursuant to the approved testing program. If the tests are conducted on or about November 1 and result in a

finding that Dungeness crabs are soft-shelled or low quality, the director shall authorize a second test to be conducted on or about November 15 pursuant to the approved testing program. If the second test results in a finding that Dungeness crabs are soft-shelled or low quality, the director may order the season opening delayed for a period of 15 days and may authorize a third test to be conducted on or about December 1. If the third test results in a finding that Dungeness crabs remain soft-shelled or of low quality, the director may order the season opening delayed for a period of an additional 15 days and authorize a fourth test to be conducted. This procedure may continue to be followed, except that tests shall not be conducted after January 1 for that season, and the season opening shall not be delayed by the director later than January 15.

(d) This section shall become inoperative on April 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2020, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended by Stats. 2012, Ch. 546, Sec. 1. Effective September 25, 2012. Inoperative April 1, 2019. Repealed as of January 1, 2020, by its own provisions.)

8276.3 – Delays in Districts 6-9 and 64-hour gear setting period

This statute was amended recently in 2014 to make the 64-hour gear setting period standard in cases when northern districts are delayed. There have been requests to change the district 10 gear setting period also to 64-hours.

(a) If there is any delay ordered by the director pursuant to Section 8276.2 in the opening of the Dungeness crab fishery in Fish and Game Districts 6, 7, 8, and 9, a vessel shall not take or land crab within Districts 6, 7, 8, and 9 during any closure.

(b) If there is any delay in the opening of the Dungeness crab season pursuant to Section 8276.2, the opening date in Fish and Game Districts 6, 7, 8, and 9 shall be preceded by a 64-hour gear setting period, as ordered by the director.

(c) This section shall become inoperative on April 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2020, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended by Stats. 2013, Ch. 233, Sec. 6. Effective January 1, 2014. Inoperative April 1, 2019. Repealed as of January 1, 2020, by its own provisions.)

8276.4 – Dungeness Crab Task Force

This section would need to be updated to allow continued existence DCTF and would need to reflect new funding source, revised due dates for tasks and recommendation, and any requests for changes in composition or structure.

(a) The Ocean Protection Council shall make a grant, upon appropriation of funding by the Legislature, for the development and administration of a Dungeness crab task force. The membership of the Dungeness crab task force shall be comprised of all of the following:

- (1) Two members representing sport fishing interests.
- (2) Two members representing crab processing interests.
- (3) One member representing commercial passenger fishing vessel interests.
- (4) Two nonvoting members representing nongovernmental organization interests.
- (5) One nonvoting representative of Sea Grant.
- (6) Two nonvoting members representing the department.

(7) Seventeen members representing commercial fishery interests, elected by licensed persons possessing valid Dungeness crab permits in their respective ports and production levels, as follows:

(A) Four members from Crescent City.

(B) One member from Trinidad.

(C) Two members from Eureka.

(D) Two members from Fort Bragg.

(E) Two members from Bodega Bay.

(F) Two members from San Francisco.

(G) Two members from Half Moon Bay.

(H) One member from ports south of Half Moon Bay.

(I) One member who has a valid California nonresident crab permit.

(b) For ports with more than one representative, elected members and their alternates shall represent both the upper and lower, and in some cases middle, production levels. Production levels shall be based on the average landing during the previous five years, of valid crab permit holders who landed a minimum of 25,000 pounds of crab during the same period.

(c) The Dungeness crab task force shall do all of the following:

(1) Review and evaluate the Dungeness crab management measures described in Section 8276.5, with initial recommendations to the Joint Committee on Fisheries and Aquaculture, the department, and the commission, no later than January 15, 2015, and final recommendations to those entities no later than January 15, 2017.

(2) Make recommendations by January 15, 2015, on all of the following: the need for a permanent Dungeness crab advisory committee, the economic impact of the program described in Section 8276.5 on permit holders of different tiers and the economies of different ports, the cost of the program to the department, including enforcement costs, the viability of a buyout program for the permit holders described in subparagraph (G) of paragraph (1) of subdivision (a) of Section 8276.5, refining sport and commercial Dungeness crab management, and the need for statutory changes to accomplish task force objectives.

(3) In considering Dungeness crab management options, prioritize the review of pot limit restriction options, current and future sport and commercial fishery effort, season modifications, essential fishery information needs, and short- and long-term objectives for improved management.

(d) The task force may establish subcommittees of specific user groups from the task force membership to focus on issues specific to sport fishing, commercial harvest, or crab processing. The subcommittees shall report their recommendations, if any, to the task force.

(e) The Ocean Protection Council may include in a grant funding to cover department staffing costs, as well as travel costs for task force participants as specified in paragraph (6) of subdivision (a).

(f) Except as otherwise provided in Section 8276.5, a recommendation shall be forwarded to the Joint Committee on Fisheries and Aquaculture, the department, and the commission upon an affirmative vote of at least two-thirds of the task force members.

(g) Eligibility to take crab in state waters and offshore for commercial purposes may be subject to restrictions, including, but not limited to, restrictions on the number of traps utilized by that person, if either of the following occurs:

(1) A person holds a California Dungeness crab permit with California landings of less than 5,000 pounds between November 15, 2003, and July 15, 2008, inclusive, as reported in California landings receipts.

(2) A person has purchased a Dungeness crab permit on or after July 15, 2008, from a permit holder whose California landings were less than 5,000 pounds between November 15, 2003, and July 15, 2008, inclusive, as reported in California landings receipts.

(h) This section shall become inoperative on April 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2020, deletes or extends the dates on which it becomes inoperative and is repealed.
(Added by Stats. 2011, Ch. 335, Sec. 3. Effective January 1, 2012. Inoperative April 1, 2019. Repealed as of January 1, 2020, by its own provisions.)

8276.5 – Dungeness crab Trap Limit Program

Evaluating the trap limit program was one of the charges the DCTF was tasked with and any recommendations to adjust any aspects of the program would be reflected in this section.

In October 2016, the DCTF recommended extending the sunset date of the trap limit program to 2029 and stated the DCTF will continue to evaluate the program and recommend modifications as need arises.

(a) In consultation with the Dungeness crab task force, or its appointed representatives, the director shall adopt a program, by March 31, 2013, for Dungeness crab trap limits for all California permits. Unless the director finds that there is consensus in the Dungeness crab industry that modifications to the following requirements are more desirable, with evidence of consensus, including, but not limited to, the record of the Dungeness crab task force, the program shall include all of the following requirements:

(1) The program shall contain seven tiers of Dungeness crab trap limits based on California landings receipts under California permits between November 15, 2003, and July 15, 2008, as follows:

(A) The 55 California permits with the highest California landings shall receive a maximum allocation of 500 trap tags.

(B) The 55 California permits with the next highest California landings to those in subparagraph (A) shall receive a maximum allocation of 450 trap tags.

(C) The 55 California permits with the next highest California landings to those in subparagraph (B) shall receive a maximum allocation of 400 trap tags.

(D) The 55 California permits with the next highest California landings to those in subparagraph (C) shall receive a maximum allocation of 350 trap tags.

(E) The 55 California permits with the next highest California landings to those in subparagraph (D) shall receive a maximum allocation of 300 trap tags.

(F) The remaining California permits with the next highest California landings to those in subparagraph (E), which are not described in paragraph (1) or (2) of subdivision (g) of Section 8276.4, shall receive a maximum allocation of 250 trap tags.

(G) The California permits described in paragraphs (1) and (2) of subdivision (g) of Section 8276.4 shall receive a maximum allocation of 175 tags. The tags in this tier shall not be transferable for the first two years of the program.

(2) Notwithstanding paragraph (1), the director shall not remove a permit holder from a tier described in paragraph (1), if, after an allocation is made pursuant to paragraph (1), an appeal pursuant to paragraph (8) places a permit holder in a tier different than the original allocation.

(3) Participants in the program shall meet all of the following requirements:

(A) Unless a participant receives a waiver pursuant to paragraph (4), pay a biennial fee for each trap tag issued pursuant to this section to pay the pro rata share of costs of the program, including, but not limited to, informing permit holders of the program, collecting fees, acquiring and sending trap tags to permit holders, paying for a portion of enforcement costs, and monitoring the results of the program. The fee shall not exceed five dollars (\$5) per trap, per

two-year period. All of the trap tags allocated to each permit pursuant to subdivision (a) shall be purchased by the permit holder or the permit shall be void.

(B) Purchase a biennial crab trap limit permit of not more than one thousand dollars (\$1,000) per two-year period to pay for the department's reasonable regulatory costs.

(C) Not lease a crab trap tag, and transfer a tag only as part of a transaction to purchase a California permitted crab vessel.

(D) A Dungeness crab trap that is fished shall contain a trap tag that is fastened to the main buoy, and an additional tag provided by the permit holder attached to the trap. The department shall mandate the information that is required to appear on both buoy and trap tags.

(4) The department shall issue a participant a waiver from the biennial fee for each trap tag described in subparagraph (A) of paragraph (3) if the participant is unable to fish due to mandatory military service and the participant submits a request for a waiver to the department at the same time that the participant renews the permit issued pursuant to subparagraph (B) of paragraph (3). A participant who receives a waiver pursuant to this paragraph shall not apply to the department to fish for Dungeness crab during the first year of the waiver, but may apply to fish for Dungeness crab during the second year of the waiver if the participant pays the full cost of the biennial fee for each trap tag. The department shall not limit the number of times a participant may request a waiver.

(5) Notwithstanding subparagraph (D) of paragraph (3), a vessel may transit state waters with Dungeness crab traps that are not tagged pursuant to subparagraph (D) of paragraph (3) if the traps contain either a valid Oregon or Washington trap tag, no crab species are onboard the vessel, and the traps are not deployed in state waters.

(6) The department shall annually provide an accounting of all costs associated with the crab trap limit program. The department shall use excess funds collected to reduce the cost of the crab trap limit permit fee or tag fee in subsequent years of the program.

(7) Permit holders may replace lost tags by application to the department and payment of a fee not to exceed the reasonable costs incurred by the department. The department may waive or reduce a fee in the case of catastrophic loss of tags.

(8) (A) Any Dungeness crab permit holder may submit to the director an appeal of a trap tag allocation received pursuant to this section, by March 31, 2014, on a permit-by-permit basis for the purpose of revising upward or downward any trap tag allocation. Any appeal to revise upward a trap tag allocation shall be based on 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. The director shall initiate the appeal process within 12 months of receiving an appeal request. The appeal shall be heard and decided by an administrative law judge of the Office of Administrative Hearings, whose decision shall constitute the final administrative decision. Except as provided in subparagraph (B), any Dungeness crab permit holder requesting an appeal to revise upward the permit holder's trap tag allocation shall pay all expenses, including a nonrefundable filing fee, as determined by the department, to pay for the department's reasonable costs associated with the appeal process described in this paragraph.

(B) Any Dungeness crab permit holder requesting an appeal may apply to the administrative law judge for a waiver of the appeal fees. In making the determination, the administrative law judge may only consider medical hardship or military service occurring during the tier qualifying window period of November 15, 2003, through July 15, 2008.

(C) An appeal to revise downward a trap tag allocation shall be decided by the department.

(b) (1) In addition to criminal penalties authorized by law, a violation of the requirements of the program created pursuant to this section shall be subject to the following civil penalties:

(A) Conviction of a first offense shall result in a fine of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000) per illegal trap or fraudulent tag.

(B) Conviction of a second offense shall result in a fine of not less than five hundred dollars (\$500) and not more than two thousand five hundred dollars (\$2,500) per illegal trap or fraudulent tag, and the permit may be suspended for one year.

(C) Conviction of a third offense shall result in a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) per illegal trap or fraudulent tag, and the permit may be permanently revoked.

(2) The severity of a penalty within the ranges described in this subdivision shall be based on a determination whether the violation was willful or negligent and other factors.

(3) The portion of monetary judgments for noncompliance that are paid to the department shall be deposited in the Dungeness Crab Account created pursuant to subdivision (e).

(c) For the purposes of this section, a proposed recommendation that receives an affirmative vote of at least 15 of the non-ex officio members of the Dungeness crab task force may be transmitted to the director or the Legislature as a recommendation, shall be considered to be the consensus of the task force, and shall be considered to be evidence of consensus in the Dungeness crab industry. Any proposed recommendation that does not receive a vote sufficient to authorize transmittal to the director or Legislature as a recommendation shall be evidence of a lack of consensus by the Dungeness crab task force, and shall be considered to be evidence of a lack of consensus in the crab industry.

(d) (1) The director shall submit a proposed program pursuant to this section to the Dungeness crab task force for review, and shall not implement the program until the task force has had 60 days or more to review the proposed program and recommend any proposed changes. The director may implement the program earlier than 60 days after it is submitted to the Dungeness crab task force for review, if recommended by the task force.

(2) After the program is implemented pursuant to paragraph (1), the director may modify the program, if consistent with the requirements of this section, after consultation with the Dungeness crab task force or its representatives and after the task force has had 60 days or more to review the proposed modifications and recommend any proposed changes. The director may implement the modifications earlier than 60 days after it is sent to the Dungeness crab task force for review, if recommended by the task force.

(e) The Dungeness Crab Account is hereby established in the Fish and Game Preservation Fund and the fees collected pursuant to this section shall be deposited in that account. The money in the account shall be used by the department, upon appropriation by the Legislature, for administering and enforcing the program.

(f) For purposes of meeting the necessary expenses of initial organization and operation of the program until fees may be collected, or other funding sources may be received, the department may borrow money as needed for these expenses from the council. The borrowed money shall be repaid within one year from the fees collected or other funding sources received. The council shall give high priority to providing funds or services to the department, in addition to loans, to assist in the development of the program, including, but not limited to, the costs of convening the Dungeness crab task force, environmental review, and the department's costs of attending meetings with task force members.

(g) (1) It is the intent of the Legislature that the department, the council, and the Dungeness crab task force work with the Pacific States Marine Fisheries Commission and the Tri-state Dungeness Crab Commission to resolve any issues pertaining to moving the fair start line south to the border of California and Mexico.

(2) For the purposes of this subdivision, the resolution of issues pertaining to the fair start line shall be limited to assessing the positive and negative implications of including District 10 in the tri-state agreement, including working with the Tri-state Dungeness Crab Commission to amend

Oregon and Washington laws to include District 10 in the regular season fair start clause, and discussion of providing different rules for District 10 with regard to preseason quality testing.

(h) For purposes of this section, "council" means the Ocean Protection Council established pursuant to Section 35600 of the Public Resources Code.

(i) This section shall become inoperative on April 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2020, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended by Stats. 2016, Ch. 542, Sec. 4. Effective January 1, 2017. Inoperative April 1, 2019. Repealed as of January 1, 2020, by its own provisions.)

8279.1 – Fair Start Provision for Districts 6-9

Newly risen issues surrounding the fair start provision relate to how season delays based on domoic acid concentrations affect the 30-day waiting period with regards to the partial opening of northern management area of districts 6 and 7, and central management area of district 10 south.

(a) A person shall not take, possess onboard, or land Dungeness crab for commercial purposes from a vessel in ocean waters in District 6, 7, 8, or 9 for 30 days after the opening of the Dungeness crab fishing season in California, if both of the following events have occurred:

(1) The opening of the season has been delayed pursuant to state law in California.

(2) The same vessel was used to take, possess onboard, or land Dungeness crab for commercial purposes, from ocean waters outside of District 6, 7, 8, or 9, prior to the opening of the season in those districts.

(b) A person shall not take, possess onboard, or land Dungeness crab for commercial purposes from a vessel in ocean waters south of the border between Oregon and California for 30 days after the opening of the Dungeness crab fishing season in California, if both of the following events have occurred:

(1) The opening of the season has been delayed pursuant to state law in California.

(2) The same vessel was used to take, possess onboard, or land Dungeness crab for commercial purposes in Oregon or Washington prior to the opening of the season in California.

(c) A person shall not take, possess onboard, or land Dungeness crab for commercial purposes from a vessel in ocean waters north of the border between Oregon and California for 30 days after the opening of the Dungeness crab fishing season in Oregon or Washington, if both of the following events have occurred:

(1) The opening of the season has been delayed in Oregon or Washington.

(2) The same vessel was used to take, possess onboard, or land Dungeness crab for commercial purposes in California prior to the opening of the season in ocean waters off Oregon or Washington.

(d) A person shall not take, possess onboard, or land Dungeness crab for commercial purposes from a vessel in ocean waters off Washington, Oregon, or California for 30 days after the opening of the Dungeness crab fishing season in California, Oregon, or Washington, if both of the following events have occurred:

(1) The opening of the season has been delayed in Washington, Oregon, or California.

(2) The same vessel was used to take, possess onboard, or land Dungeness crab for commercial purposes in either of the two other states prior to the delayed opening in the ocean waters off any one of the three states.

(e) A violation of this section does not constitute a misdemeanor. Pursuant to Section 7857, the commission shall revoke the Dungeness crab vessel permit that was issued for use on the vessel that was used in violation of this section.

(f) This section shall become inoperative on April 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2020, deletes or extends the dates on which it becomes inoperative and is repealed.
(Amended by Stats. 2016, Ch. 542, Sec. 5. Effective January 1, 2017. Inoperative April 1, 2019. Repealed as of January 1, 2020, by its own provisions.)

8280.1 – Dungeness crab Vessel Permit (Limited Entry Qualifications)

Language crossed out below discusses criteria to qualify for a Dungeness crab vessel permit after April 1, 1994. This criteria established the limited entry permit system for this fishery and may no longer be relevant now that all limited entry permits have been in place for 2 decades.

(a) A person shall not use a vessel to take, possess, or land Dungeness crab for commercial purposes using Dungeness crab traps authorized pursuant to Section 9011, unless the owner of that vessel has a Dungeness crab vessel permit for that vessel that has not been suspended or revoked.

(b) A Dungeness crab vessel permit may be issued only to the following persons for use on qualifying vessels:

~~(1) A person, who has a commercial fishing license issued pursuant to Section 7852 or Article 7 (commencing with Section 8030) of Chapter 1 that has not been suspended or revoked, who is the owner of a commercial fishing vessel that has been registered with the department pursuant to Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years and a minimum of four landings in each of three Dungeness crab seasons in the period from November 1, 1984, to April 1, 1994, have been made from that vessel. This paragraph includes any person purchasing a vessel qualifying pursuant to this paragraph.~~

~~(2) A person who has a commercial fishing license issued pursuant to Section 7852 or Article 7 (commencing with Section 8030) of Chapter 1 that has not been suspended or revoked, who is the owner of a commercial fishing vessel that has been registered with the department pursuant to Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years and a minimum of four landings in one of the Dungeness crab seasons in the period from November 1, 1984, to April 1, 1994, have been made from that vessel in this state as documented by landing receipts delivered to the department pursuant to Section 8046, who the department finds to have been unable, due to illness or injury or any other hardship, to make a minimum of four landings in each of two of the previous three Dungeness crab seasons, and who, in good faith, intended to participate in the Dungeness crab fishery in those seasons.~~

~~(3) A person who has a commercial fishing license issued pursuant to Section 7852 that has not been suspended or revoked, who meets the requirements of Section 8101, and who, notwithstanding Section 8101, is, at the time of application, the owner of a fishing vessel that is not equipped for trawling with a net and that has been registered pursuant to Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years. Not more than one Dungeness crab vessel permit shall be issued to any person qualifying under Section 8101 and all permits issued under Section 8101, notwithstanding subdivision (b) of Section 8280.3, shall be nontransferable. A person qualifying for a permit under this paragraph shall have participated in the Dungeness crab fishery on or before March 31, 1994, as documented by landing receipts that were prepared in that person's name for not less than four landings of Dungeness crab taken in a crab trap in a Dungeness crab season and were delivered to the department pursuant to Section 8046. A person shall not be issued a permit under this paragraph if that person has been issued a permit under any other provision of this section for another vessel. For purposes of Section 8101, "participated in the fishery" means made not less than four landings of~~

~~Dungeness crab taken by traps in that person's name in one Dungeness crab season. The department shall separately identify permits issued pursuant to this paragraph and those permits shall become immediately null and void upon the death of the permittee. The department shall not issue or renew any permit under this paragraph to a person if the person failed to meet the participation requirements of four landings in one season prior to April 1, 1994, or has been issued a Dungeness crab permit for a vessel under any other paragraph of this subdivision.~~

~~(4) A person who has a commercial fishing license issued pursuant to Section 7852 that has not been suspended or revoked, who meets one of the following conditions:~~

~~(A) The person held a Dungeness crab permit issued pursuant to Section 8280 as it read on April 1, 1994, and participated in the Dungeness crab fishery between November 1, 1984, and April 1, 1994, and is the owner of a vessel that has been registered with the department in each of the 1991-92, 1992-93, and 1993-94 permit years but did not make landings or the department records do not indicate a minimum of four landings per season for three Dungeness crab seasons from that vessel or in that person's name because of a partnership or other working arrangement where the person was working aboard another vessel engaged in the Dungeness crab fishery in California.~~

~~(B) The person held a Dungeness crab permit issued under Section 8280 as it read on April 1, 1994, and is the owner of a commercial fishing vessel that has been registered with the department pursuant to Section 7881 in each of the 1991-92, 1992-93, and 1993-94 permit years and from which a minimum of four landings utilizing traps were made in at least one Dungeness crab season in the period between November 1, 1984, and April 1, 1994, and from which either four landings were made utilizing traps or landings in excess of 10,000 pounds were made utilizing traps in each of two other Dungeness crab seasons in that same period, as documented by landing receipts.~~

~~(C) The person held a Dungeness crab vessel permit issued under Section 8280 as it read on April 1, 1994, or was an officer in a California corporation that was licensed pursuant to Article 7 (commencing with Section 8030) of Chapter 1 as of April 1, 1994, and began construction or reconstruction of a vessel on or before January 1, 1992, for the purpose of engaging in the Dungeness crab fishery, including the purchase of equipment and gear to engage in that fishery in California. A person may be issued a permit under this condition only if the person intended in good faith to participate in the California Dungeness crab fishery, a denial of a permit would create a financial hardship on that person, and, for purposes of determining financial hardship, the applicant is a nonresident and cannot participate with his or her vessel or vessels in the Dungeness crab fishery of another state because of that state's limited entry or moratorium on the issuance of permits for the taking of Dungeness crab.~~

~~(5) A person who has a commercial fishing license issued pursuant to Section 7852 that has not been suspended or revoked, who held a Dungeness crab permit issued under Section 8280 as it read on April 1, 1994, who made a minimum of four landings of Dungeness crab taken by traps in each of three Dungeness crab seasons in the period from November 1, 1984, to April 1, 1994, in his or her name in this state from a vessel owned by that person, as documented by landing receipts, who, between April 1, 1991, and January 1, 1995, purchased, contracted to purchase, or constructed a vessel, not otherwise qualifying pursuant to paragraph (1), (2), or (4), who has continuously owned that vessel since its purchase or construction, and who either (A) has used that vessel for the taking of Dungeness crab in this state on or before March 31, 1995, as documented by one or more landing receipts delivered to the department pursuant to Section 8046, or (B) intended in good faith, based on evidence that the department and the review panel may require, including investment in crab gear, to enter that vessel in this state's Dungeness crab fishery not later than December 1, 1995. Not more than one permit may be issued to any one person under this paragraph.~~

~~(6) A person who held a Dungeness crab permit issued under Section 8280 as it read on April 1, 1994, who made a minimum of four landings utilizing traps in this state in each of three Dungeness crab seasons in the period between November 1, 1984, and April 1, 1994, in his or her name from a vessel operated by that person as documented by landing receipts, who currently does not own a vessel in his or her name, and who has not sold or transferred a vessel otherwise qualifying for a permit under this section. A permit may be issued under this paragraph for a vessel not greater in size than the vessel from which the previous landings were made, and, in no event, for a vessel of more than 60 feet in overall length, to be placed on a vessel that the person purchases or contracts for construction on or before April 1, 1996. A permit issued under this paragraph shall be nontransferable and shall not be used for a vessel not owned by that person, and shall be revoked if the person (A) fails to renew the permit or annually renew his or her commercial fishing license issued pursuant to Section 7852 or (B) is or becomes the owner of another vessel permitted to operate in the Dungeness crab fishery pursuant to this section.~~

~~(c) The department may require affidavits offered under penalty of perjury from persons applying for permits under subdivision (b) or from witnesses corroborating the statements of a person applying for a Dungeness crab vessel permit. Affidavits offered under penalty of perjury shall be required of an applicant if the department cannot locate records required to qualify under subdivision (b).~~

~~(d) A person shall not be issued a Dungeness crab vessel permit under this section for any vessel unless that person has a valid commercial fishing license issued pursuant to Section 7852 that has not been suspended or revoked.~~

~~(e) Notwithstanding Section 7852.2 or subdivision (e) of Section 8280.2, the department may issue a Dungeness crab vessel permit that has not been applied for by the application deadline if the department finds that the failure to apply was a result of a mistake or hardship, as established by evidence the department may require, the late application is made not later than October 15, 1995, and payment is made by the applicant of a late fee of two hundred fifty dollars (\$250) in addition to all other fees for the permit.~~

~~(f) The department may waive the requirement that a person own a commercial fishing vessel that has been registered with the department pursuant to Section 7881 in each of the 1991-92, 1992-93, and 1993-94 permit years for one of those required years under this section only if the vessel was registered and used in the California Dungeness crab fishery during the registration year immediately prior to the year for which the waiver is sought and was registered and used in the California Dungeness crab fishery after the year for which the waiver is sought and if the reason for the failure to register in the year for which the waiver is sought was due to a death, illness, or injury, or other hardship, as determined by the review panel, that prevented the vessel from being registered and operated in the fishery for that registration year.~~

~~(g) (1) If any person submits false information for the purposes of obtaining a Dungeness crab vessel permit under this section, the department shall revoke that permit, if issued, revoke the person's commercial fishing license that was issued pursuant to Section 7850 for a period of not less than five years, and revoke the commercial boat registration for a period of not less than five years of any vessel registered to that person pursuant to Section 7881 of which that person is the owner.~~

~~(2) In addition to criminal penalties authorized by law, a person who fishes without a Dungeness crab vessel permit, or who uses a Dungeness crab vessel permit to fish illegally on another vessel other than the permitted one, shall be subject to a fine not more than twenty thousand dollars (\$20,000) and, at the discretion of the department, revocation of the person's fishing license for a period not to exceed five years and revocation of the commercial boat registration license for a period not to exceed five years.~~

(h) This section shall become inoperative on April 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2020, deletes or extends the dates on which it becomes inoperative and is repealed.
(Amended by Stats. 2011, Ch. 335, Sec. 6. Effective January 1, 2012. Inoperative April 1, 2019. Repealed as of January 1, 2020, by its own provisions.)

8280.2 – Owners of Dungeness crab Vessel Permit (Qualifications)

No issues brought up thus far with regard to the ownership criteria of a Dungeness crab vessel permit.

(a) The owner of a Dungeness crab vessel, for purposes of this section, may include a person with a bona fide contract for the purchase of a vessel who otherwise meets all other qualifications for a Dungeness crab vessel permit. If a contract is found to be fraudulent or written or entered into for the purposes of circumventing qualification criteria for the issuance of a permit, the applicant shall be permanently ineligible for a Dungeness crab vessel permit.

(b) A Dungeness crab vessel permit shall be issued only to the person owning the vessel at the time of application for that permit. A person shall not be issued more than one permit for each vessel owned by that person and qualifying for a permit pursuant to Section 8280.1.

(c) A Dungeness crab vessel permit shall be issued only to the owner of a vessel taking crab by traps. A permit shall not be issued to the owner of a vessel using trawl or other nets unless the owner of that vessel qualifies for a permit pursuant to paragraph (1) of subdivision (b) of Section 8280.1. A trawl or other net vessel authorized under this code to take Dungeness crab incidental to the taking of fish in trawl or other nets shall not be required to possess a Dungeness crab vessel permit.

(d) Dungeness crab vessel permits shall not be combined or otherwise aggregated for the purpose of replacing smaller vessels in the fishery with a larger vessel, and a permit shall not be divided or otherwise separated for the purpose of replacing a vessel in the fishery with two or more smaller vessels.

(e) Applications for renewal of all Dungeness crab vessel permits shall be received by the department, or, if mailed, postmarked, by April 30 of each year. In order for a vessel to retain eligibility, a permit shall be obtained each year subsequent to the initial permit year and the vessel shall be registered pursuant to Section 7881. The vessel owner shall have a valid commercial fishing license issued to that person pursuant to Section 7852 that has not been suspended or revoked. Minimum landings of Dungeness crab shall not be required annually to be eligible for a Dungeness crab vessel permit.

(f) This section shall become inoperative on April 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2020, deletes or extends the dates on which it becomes inoperative and is repealed.
(Amended by Stats. 2011, Ch. 335, Sec. 7. Effective January 1, 2012. Inoperative April 1, 2019. Repealed as of January 1, 2020, by its own provisions.)

8280.3 – Transfers of Dungeness crab Vessel Permit

This section was amended in 2012 to not allow the temporary permit transfer for those permits considered inactive (<5,000 pounds landed from prior two seasons). Other issues regarding vessel transfers include but are not limited to: changing the size restrictions of the vessel, standardizing the definition of overall vessel size as there are different ways of measuring overall vessel length, no specific restriction relating to the transoming (increasing width of a vessel) or sponsoning (increase the length of a vessel) of a vessel and potentially limiting the number of permit transfers allowed in a year.

(a) Notwithstanding Article 9 (commencing with Section 8100) of Chapter 1 and except as provided in this section, a Dungeness crab vessel permit shall not be transferred.

(b) The owner of a vessel to whom a Dungeness crab vessel permit has been issued shall transfer the permit for the use of that vessel upon the sale of the vessel by the permit holder to the person purchasing the vessel. Thereafter, upon notice to the department, the person purchasing the vessel may use the vessel for the taking and landing of Dungeness crab for any and all of the unexpired portion of the permit year, and that person is eligible for a permit pursuant to Section 8280.1 for the use of that vessel in subsequent years. The person purchasing the vessel shall not transfer the permit for use of that vessel in the Dungeness crab fishery to another replacement vessel during the same permit year.

(c) The owner of a vessel to whom the Dungeness crab vessel permit has been issued may transfer the permit to a replacement vessel of equivalent capacity, except as specified in this section. Thereafter, upon notice to the department and payment of the transfer fee specified in Section 8280.6, the replacement vessel may be used for the taking and landing of Dungeness crab for any and all of the unexpired portion of the permit year and that person is eligible for a permit pursuant to Section 8280.1 for the use of that replacement vessel in subsequent years.

(d) The owner of a permitted vessel may transfer the permit to a vessel of greater capacity that was owned by that person on or before November 15, 1995, not to exceed 10 feet longer in length overall than the vessel for which the permit was originally issued or to a vessel of greater capacity purchased after November 15, 1995, not to exceed 5 feet longer in length overall than the vessel for which the permit was originally issued.

(e) The department may authorize the owner of a permitted vessel to transfer the permit to a replacement vessel that was owned by that person on or before April 1, 1996, that does not fish with trawl nets that is greater than five feet longer in length overall than the vessel for which the permit was originally issued, if all of the following conditions are satisfied:

(1) A vessel of a larger size is essential to the owner for participation in another fishery other than a trawl net fishery.

(2) The owner held a permit on or before January 1, 1995, for the fishery for which a larger vessel is needed and has participated in that fishery.

(3) The permit for the vessel from which the permit is to be transferred qualified pursuant to paragraph (1) of subdivision (b) of Section 8280.1.

(4) The vessel to which the permit is to be transferred does not exceed 20 feet longer in length overall than the vessel for which the permit was originally issued and the vessel to which the permit is to be transferred does not exceed 60 feet in overall length.

(f) A transfer of a permit to a larger vessel shall not be allowed more than one time. If a permit is transferred to a larger vessel, any Dungeness crab vessel permit for that permit year or any subsequent permit years for that larger vessel shall not be transferred to another larger vessel. The department shall not thereafter issue a Dungeness crab vessel permit for the use of the original vessel from which the permit was transferred, except that the original vessel may be used to take or land Dungeness crab after that transfer if its use is authorized pursuant to

another Dungeness crab vessel permit subsequently transferred to that vessel pursuant to this paragraph.

(g) (1) Upon the written approval of the department, the owner of a vessel to whom the Dungeness crab vessel permit has been issued, which has California Dungeness crab landings made with trap gear documented on department landing receipts and which has had California Dungeness crab landings amounting to not less than 5,000 pounds cumulative for the past two Dungeness crab seasons, may temporarily transfer the permit to a replacement vessel for which use in the Dungeness crab fishery is not permitted pursuant to this section or Section 8280.1 that is of equivalent size and capacity of the originally permitted vessel, no greater than 10 feet longer in length overall than the vessel from which the permit is transferred, for a period of not more than six months during the current permit year if the vessel for which the permit was issued is seriously damaged, suffers major mechanical breakdown, or is lost or destroyed, as determined by the department, upon approval of the director. The owner of the vessel shall submit proof that the department may reasonably require to establish the existence of the conditions of this paragraph. Only the permittee at the time of the loss, theft, damage, breakdown, or destruction of the vessel may apply for the transfer of the vessel permit. Proof of loss or destruction shall be documented by submission of a copy of the report filed with the United States Coast Guard or any other law enforcement or fire agency that investigated 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 permit for a replacement vessel pursuant to this subdivision if the permitted vessel was reported lost, stolen, mechanically broken down, destroyed, or damaged for fraudulent purposes. Upon approval by the director, the owner of a vessel granted a six-month temporary transfer under this section may be granted an additional six-month extension of the temporary transfer.

(2) Notwithstanding subdivision (e) of Section 8280.2, in the event of loss or destruction of a vessel for which a Dungeness crab vessel permit was issued, or serious damage that renders the vessel inoperable, and upon written approval of the department, the owner of the vessel to whom the permit was issued may retain the permit and may transfer the permit to another vessel of equivalent size and capacity of the vessel that was lost or damaged during the period of two years after the loss or damage of the vessel for which the permit was originally issued. The owner of the lost or damaged vessel shall submit proof that the department may reasonably require to establish the loss or damage of the vessel. Only the permittee at the time of the loss, theft, damage, or destruction of the vessel may apply for the transfer of the vessel permit. Proof of loss or destruction shall be documented by submission of a copy of the report filed with the United States Coast Guard or any other law enforcement or fire agency that investigated 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 permit for a replacement vessel pursuant to this paragraph if the lost or damaged vessel was reported lost, stolen, destroyed, mechanically broken down, or damaged for fraudulent purposes. The department shall only transfer a permit pursuant to this paragraph if the lost or damaged vessel has a current permit and the owner of the lost or damaged vessel makes assurances in the application that any renewal of the permit that becomes due during the application processing period will be made. If the permit is not permanently transferred to another vessel owned by the person to whom the vessel permit was originally issued within two years of the loss or damage, the permit shall become void by operation of law.

(h) Upon written approval of the department, the owner of a vessel to whom the Dungeness crab vessel permit has been issued may retain that permit upon the sale of that permitted vessel for the purpose of transferring the permit to another vessel to be purchased by that individual within one year of the time of sale of the vessel for which the permit was originally issued if the requirements of this section are satisfied, including the payment of transfer fees. If the permit is

not transferred to a new vessel owned by the person to whom the vessel permit was originally issued within one year of the sale of the vessel for which it was originally issued, or if the person does not retain ownership of the new vessel to which the permit is transferred for a period of not less than one year, the permit shall become void by operation of law.

(i) In the event of the death or incapacity of a permitholder, the permit shall be transferred, upon application, to the heirs or assigns, or to the working partner, of the permitholder, together with the transfer of the vessel for which the permit was issued, and the new owner may continue to operate the vessel under the permit, renew the permit, or transfer the permit upon sale of the vessel pursuant to subdivision (b). The estate of the holder of a transferable Dungeness crab vessel permit may renew that permit as provided for in statute if needed to keep it valid. The estate of the decedent may transfer that permit pursuant to these regulations no later than two years from the date of death of the permitholder as listed on the death certificate.

(j) This section shall become inoperative on April 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2020, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended by Stats. 2012, Ch. 546, Sec. 3. Effective September 25, 2012. Inoperative April 1, 2019. Repealed as of January 1, 2020, by its own provisions.)

8280.4 – Violation of Terms of Dungeness crab Vessel Permit/Revocation

No issues brought up thus far with regard to the ownership criteria of a Dungeness crab vessel permit.

(a) The commission may revoke the commercial fishing license issued pursuant to Section 7852 of any person owning a fishing vessel engaging in the taking or landing of Dungeness crab by traps for which that person has not obtained a Dungeness crab vessel permit, and the commission may revoke the registration, issued pursuant to Section 7881, for that vessel.

(b) This section shall become inoperative on April 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2020, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended by Stats. 2011, Ch. 335, Sec. 9. Effective January 1, 2012. Inoperative April 1, 2019. Repealed as of January 1, 2020, by its own provisions.)

8280.5 – Hardship Permit Review Panel

This section is no longer applicable after the limited entry permit system has been established and all limited entry permits have been in place for the past 2 decades.

~~(a) The director shall convene a Dungeness crab review panel for the purpose of reviewing applications for Dungeness crab vessel permits pursuant to paragraphs (2) and (4) of subdivision (b) of Section 8280.1 and applications for permit transfers pursuant to Section 8280.3 if the department determines that the additional review and advice of the panel will be helpful in deciding whether to issue a permit or approve a transfer.~~

~~(b) The panel shall consist of one nonvoting representative of the department and three public voting members selected by the director to represent the Dungeness crab fishing industry. One public member shall be licensed pursuant to Article 7 (commencing with Section 8030) of Chapter 1 and active in Dungeness crab processing in this state. Two public members shall be licensed pursuant to Section 7852, one from Sonoma County or a county south of Sonoma County, and one from Mendocino County or a county north of Mendocino County, and active in the taking and landing of Dungeness crab in this state. The public members shall be reimbursed for their necessary and proper expenses to participate on the panel. A public member shall serve on the panel for not more than four consecutive years.~~

- ~~(c) The panel may conduct its review of applications referred to it by mail or teleconference.~~
~~(d) The panel shall review each application for a permit or permit transfer referred to it by the department and shall consider all oral and written evidence presented by the applicant that is pertinent to the application under review. If the panel recommends issuance of a permit or approval of the transfer, the department may issue a Dungeness crab vessel permit pursuant to Section 8280.1 or approve a permit transfer pursuant to Section 8280.3.~~
~~(e) All appeals of denials of Dungeness crab vessel permits shall be made to the commission and may be heard by the commission if the appeal of denial is filed in writing with the commission not later than 90 days from the date of a permit denial. The commission may order the department to issue a permit upon appeal if the commission finds that the appellant qualified for a permit under this chapter.~~
~~(f) This section shall become inoperative on April 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2020, deletes or extends the dates on which it becomes inoperative and is repealed.~~
(Amended by Stats. 2011, Ch. 335, Sec. 10. Effective January 1, 2012. Inoperative April 1, 2019. Repealed as of January 1, 2020, by its own provisions.)

8280.6 – Dcrab Vessel Permit Fees for Residents and Non-Residents

Issue with this section regarding increasing the cost of permit vessel transfers since they do not cover the Department's administrative costs as well as the disparity between resident fee versus the non-resident fee, which was subject of a recent lawsuit Marilley v. McCamman (United States District Court, Northern District of California, Case No. 11-cv-2418-DMR).

- (a) The department shall charge a fee for each Dungeness crab vessel permit of two hundred dollars (\$200) for a resident of California and four hundred dollars (\$400) for a nonresident of California, for the reasonable regulatory costs of the department.
(b) The department shall charge a nonrefundable fee of two hundred dollars (\$200) for each transfer of a permit authorized pursuant to Section 8280.3, for the reasonable regulatory costs of the department.
(c) A vessel owner shall sign an application for transfer and certify that the information included in the application is true to the best of his or her information and belief.
(d) This section shall become inoperative on April 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2020, deletes or extends the dates on which it becomes inoperative and is repealed.
(Amended by Stats. 2012, Ch. 546, Sec. 4. Effective September 25, 2012. Inoperative April 1, 2019. Repealed as of January 1, 2020, by its own provisions.)

DIVISION 6. FISH [5500 - 9101], PART 3. COMMERCIAL FISHING [7600 - 9101], CHAPTER 4. Other Means of Taking [9000 - 9055]

9002.5 – Gear Retrieval Program

Department continues to work on developing a program that satisfies the requirements of the statute and is amenable and workable by the fleet.

- (a) Notwithstanding Section 9002, the department, in consultation with the Dungeness crab task force, shall develop regulations as necessary to provide for the retrieval of lost or abandoned commercial crab traps.

(b) (1) As part of the regulations adopted pursuant to subdivision (a), the department shall establish a retrieval permit program that facilitates the removal of lost or abandoned crab gear in an efficient and cost-effective manner consistent with all of the following:

(A) The department shall establish a retrieval permit that grants a person who obtains a retrieval permit the authority to retrieve during the closed season of the Dungeness crab commercial fishery lost or abandoned Dungeness crab traps belonging to another person and to receive compensation for that retrieval on a per trap basis from the revenue generated by the fee established pursuant to subparagraph (B).

(B) The department shall establish a fee to be charged to a Dungeness crab vessel permit holder for each trap belonging to the permit holder that is retrieved through the program. The department shall set the fee at a level sufficient to cover the reasonable regulatory costs associated with the program and to provide reasonable compensation to a retrieval permit holder on a per trap basis. The reasonable regulatory costs associated with the program include, but are not limited to, administrative costs, storage costs, and costs associated with disposing unusable traps or traps whose owner cannot be identified.

(C) The department may use entities in addition to the department, including, but not limited to, nongovernmental organizations, to help implement the program.

(D) A Dungeness crab trap shall not be returned to the owner of the trap until the owner has paid the fee established pursuant to subparagraph (B).

(E) The department shall not renew a Dungeness crab vessel permit until any fee imposed pursuant to subparagraph (B) has been paid.

(2) The department may adopt additional requirements necessary to implement the program described in this subdivision.

(3) The department shall submit the proposed program developed pursuant to this subdivision to the Dungeness crab task force for review, and shall not implement the program until the task force has had 60 days or more to review the proposed program and recommend any proposed changes. The director may implement the program earlier than 60 days after it is submitted to the Dungeness crab task force for review, if recommended by the task force.

(c) This section shall become inoperative on April 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2020, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended by Stats. 2016, Ch. 542, Sec. 6. Effective January 1, 2017. Inoperative April 1, 2019. Repealed as of January 1, 2020, by its own provisions.)