

# Options & Considerations: Dungeness Crab Commercial Trap Limit Program

## California Dungeness Crab Task Force

*Drafted developed by the DCTF Admin Team to support the October 16-18, 2017 DCTF Meeting*

The following options are currently under consideration by the California Dungeness Crab Task Force (DCTF) for possible recommendations for amendments to the California Commercial Dungeness Crab Trap Limit Program. These options have been informed by the DCTF Executive Committee (EC) and from public comments throughout 2017 and **will be discussed and are expected to be voted on by the DCTF during the October 16-19, 2017 meeting**. DCTF Members are responsible for sharing these options with their constituents and be ready to vote to make final recommendations at the October 2017 DCTF meeting.

### **Dungeness Crab Trap Limit Program, Overview**

In the [January 2017 report](#), the DCTF indicated the California Commercial Dungeness Crab Trap Limit Program (trap limit program) (Fish and Game Code 8276.5) was working overall. The report also contained a recommendation to extend the sunset date of the trap limit program from 2019 through 2029 and highlighted that the DCTF would continue to review and evaluate the program with the goal of forwarding future recommendations for potential adjustments to the trap limit program to the Legislature, California Department of Fish and Wildlife (CDFW), and Fish and Game Commission.

During the 2016 DCTF meeting, the DCTF Members expressed interest in addressing a number of potential adjustments to the trap limit program in the future including:

- Build in mechanisms to allow fishermen to increase their trap allocation while maintaining the profitability of individual permits.
- Adjust the costs of the trap tags and potentially remove the biannual trap tag fee to more accurately reflect CDFW's costs to implement the trap limit program.
- Consider reallocating and/or utilizing available permits that have undergone attrition, make these permits available to those looking to move up/down between tiers, to support new entries to the fishery, etc.

### *Options: Program Adjustments*

Since the October 2016 DCTF meeting, options and ideas have been generated by DCTF Members and the public. Options include, but are not limited to:

- Change the 2-year trap tag to a 1-year trap tag, which would eliminate between season tags.
- Eliminate 10% in-season replacement tags.
- Instead of replacing all tags every two years, only replace the tags that are lost and worn out. Permitholders would only be charged for the replacement tags, which would reduce the cost of trap tags and reduce plastic waste.
- Consider adding a radio frequency identification (RFID) tag to each trap tag to help locate lost tags/buoys.
- Other options?

The DCTF will discuss goals of these options and new options and ideas may be generated and voted on during the October 16-18, 2017 DCTF meeting.

### **Additional Background: Fish and Game Code 8276.5- Dungeness crab Trap Limit Program**

(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) Permitholders 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 permitholder 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 permitholder requesting an appeal to revise upward the permitholder'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 permitholder 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.)*