

**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 200, 202, 205, 215 and 220 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 206, 215 and 220, of said Code, proposes to amend subsection 29.85(a)(2)(A), Title 14, California Code of Regulations, relating to Dungeness crab.

**Informative Digest/Policy Statement Overview**

Current regulations of subsection 29.85 (a)(2)(A), Title 14, CCR specify that Dungeness crab may be taken recreationally from the last Saturday in November through July 30 in Del Norte, Humboldt and Mendocino counties. Depending on the calendar year, northern California recreational Dungeness crab fishermen have a maximum of seven days and a minimum of one day advance fishing opportunity before the commercial season begins. However, since commercial crab traps may be baited and set in advance of the opening day, this year (2008) commercial fishermen will be able to set gear before the sport season opens.

The commercial crab season in districts six, seven, eight and nine (Del Norte, Humboldt and Mendocino counties) opens on December 1 (unless it is delayed by the Director pursuant to FGC Section 8276.2) and closes on July 15, by authority of FG Code section 8276. In addition, FG Code section 8283 allows the Director to specify a date and time when commercial crab traps may be baited and set in advance of the opening day. This has traditionally been a 64 hour pre-soak period.

The presumed intent of the sport fishery opening date in advance of the commercial season opening date was to give the sport fishermen a brief period of time to fish for Dungeness crab without competition from commercial fishermen and their gear. The result, though, is that in some seasons, such as 2008/09, the sport crabbing season will not begin until after the commercial fishermen have had an advance opportunity to set their gear in the prime crab areas. Currently, with the traditional 64 hour commercial pre-soak period, sport fishermen in northern counties can encounter commercial gear on about 40 percent of their opening days.

The Department received several dozen faxes, letters and phone calls since last November from northern California sport fishermen, requesting more Dungeness crab fishing time for the sport fishery prior to the commercial season. Sport fishermen claim that once the commercial fishery begins, they can't catch any "decent" sized crab and they can't find an open place nearshore for their crab traps. The issue of an earlier sport fishery opening date was addressed by the Commission in 2006 in response to testimony at a Commission meeting from a sport fisherman, Mr. John Duffy, who requested a uniform statewide November 1<sup>st</sup> opening date for Dungeness crab. Commission records indicate that the uniform November 1<sup>st</sup> opening date request was rejected by the Commission. However, regulatory language regarding the season opener was changed with the 2007/08 season for both regions, in order to make the language less confusing (amendment of subsections (a)(2)(A)-(B) operative 2-28-2007). In central California, it was changed from 'the Saturday before the second Tuesday in November' to the 'first Saturday in November'; while in northern California the language was changed from 'the Saturday before December 1<sup>st</sup>' to 'the last Saturday in November'.

The proposed regulations would allow the Commission to change the sport fishery opening date

in the northcoast to either the first or third Saturday in November.

**Proposed Dungeness crab sport fishery regulation changes – T14, subsection 29.85(a)(2)(A)**

**29.85 Crabs. (a) Dungeness crab (*Cancer magister*): (2) Open Season: (A) Del Norte, Humboldt and Mendocino counties: [(Option 1) From the first last Saturday in November through July 30] OR [(Option 2) From the third last Saturday in November through July 30].**

If adopted for the 2008/09 season, under Option (1) north coast fishermen would have an additional 28 days of fishing prior to the commercial opening, and under Option (2) north coast fishermen would have an additional 14 days of fishing prior to the commercial opening (not including the commercial pre-soak allowance). In any particular season, the fewest pre-commercial season fishing days possible under Option (1) would be 23 days, and nine days under Option (2). An increase in crab fishing opportunity could help to offset lost opportunity in other fisheries, such as salmon and groundfish.

Option (1) simplifies statewide regulations by establishing a uniform opening date for the recreational Dungeness crab fishery throughout the entire state, while Option (2) provides a similar number of days for the recreational fishery prior to the onset of commercial fishing in both the north coast and central coast management regions. Option (2) also reduces the likelihood of encountering soft crab compared to Option (1).

**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 City of Carpinteria, City Council Chambers, 5775 Carpinteria Avenue, Carpinteria, California, on Friday, August 8, 2008, at 8:30 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at Truckee Donner Public Utilities District, 11570 Donner Pass Road, Truckee, California on Friday, September 5, 2008, at 8:30 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 August 22, 2008, at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on September 2, 2008. All comments must be received no later than September 5, 2008, at the hearing in Truckee, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., 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 Sheri Tiemann at the preceding address or phone number. **Marija Vojkovich, Marine Region, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission 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. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

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**

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.

- (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: None

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

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: There is no anticipated significant increase or decrease in costs to either Department administrative, biological or enforcement divisions, associated with the proposed project. An earlier opening season in Del Norte, Humboldt and Mendocino counties may increase fishing effort by some unknown, but limited amount, while shifting effort from later to earlier dates.

- (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: 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.

**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 or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: July 8, 2008

John Carlson, Jr.  
Executive Director