

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

(Continuation of California Notice Register 2005, No. 3-Z,
and Meeting of February 4, 2005.)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 8254 and 8259 of the Fish and Game Code and to implement, interpret or make specific sections 2365, 7852.2, 8043, 8046, 8250-8259, 9002-9006 and 9010 of said Code, proposes to amend Sections 122, Title 14, California Code of Regulations, regarding Transferability of Commercial Spiny Lobster Fishing Permits.

Proposed changes to Section 122 as set forth in the first notice regarding transferability of commercial spiny lobster fishing permits (Notice Register 2005, No. 3-Z, published January 21, 2005) remain the same, **except for the additional proposal to limit the number of traps that may be used once a permit is transferred, as shown in bold face type below (see Updated Informative Digest below).**

Updated Informative Digest/Policy Statement Overview

State law (Sections 8254 and 8259, Fish and Game Code) authorizes the Commission to set the conditions for issuance of and to limit the number of commercial lobster permits.

Existing regulations (Section 122, Title 14, California Code of Regulations) set the conditions for issuance and renewal of commercial lobster fishing permits.

Under these regulations all lobster operator permits are non-transferable.

The proposed amendments would create a transferable lobster operator permit and set qualification criteria based on prior participation. The Commission will consider a range of landings from either Option A or Option B, below to have an existing 2005-06 non-transferable permit designated a transferable permit.

Option A: A fisherman would have to have landed a minimum of 500 pounds per year in 4 of 5 years during the window period extending from the 1996-97 through the 2000-01 season or have landed a minimum 2,000 pounds per year in [1 or 2] of the same 5 year window period (1996-97 through 2000-01). All such landings would have to have been reported to the Department pursuant to sections 8043 and 8046, Fish and Game Code.

Option B: A fisherman would have to have landed a total of [500 to 80,000] pounds

within the time period commencing with the [1996-97 – 2000-01] season and ending with the [2000-01 – 2003-04] season. All such landings would have to have been reported to the Department pursuant to sections 8043 and 8046, Fish and Game Code.

All 2005-06 permits not meeting the qualification criteria would remain non-transferable.

The Department would be charged with making an initial determination as to who meets the qualification criteria and notifying all lobster operator permit holders as to that determination. Any lobster operator permit holders not meeting the qualification criteria based on Department records could submit copies of their own records to show they do meet them. Such copies would have to be submitted on or before March 31, 2006.

Existing regulation sets the deadlines for submission of lobster operator permit renewal applications as May 31 (normal, no penalty fee), June 1-30 (late renewal, \$50 late penalty) and after June 30 (no renewal, permit application returned).

The proposed action would advance those deadlines by one month in each instance, to April 30 (normal), May 1-31 (late) and after May 31 (no renewal) and clarify that any permit not renewed will be considered forfeited to the Department. In addition, the proposed regulations state that the late penalty is determined pursuant to Section 7852.2 of the Fish and Game Code, instead of listing the actual dollar amount.

There are no regulations regarding the transfer of lobster operator permits. The proposed action would set the conditions under which transferable lobster operator permits could be transferred to new fishermen. To transfer a permit the permit holder or his/her estate would have to submit a notarized letter identifying the transferee, the original transferable lobster operator permit, a copy of the transferee's current California commercial fishing license, and a non-refundable \$500 permit transfer fee to the Department's License and Revenue Branch in Sacramento. The new permit would be valid for the remainder, if any, of the then current lobster season and could be renewed as provided.

The Commission will consider if there should be a limit of from 2 to 25 permit transfers per year until March 31, 2008, after which date any number of permits could be transferred, or if there should be no limit on transfers at all. Permit transfer requests would be processed in the order received. If on any given day the number of applications received exceeded the available number of transfers the Department would conduct a drawing to determine which application(s) shall be accepted. This limit would not apply in the case of the death of the permittee. The estate of a deceased permit holder would be able to renew the permit if needed to keep it valid, and would have one year from the date of death of the permit holder, as listed on the death certificate, to transfer the permit.

The Commission will now also consider if there should be a limit of 400 traps applied to all new lobster operator permits issued via the permit transfer process

being proposed in this regulatory package. If approved, when any transferable lobster operator permit is transferred to a new person that permit would be marked by the Department as being valid for not more than 400 traps.

Existing regulations require fishermen to complete and submit an accurate record of fishing activity on the "Daily Lobster Log, DFG 122 (6/95)", provided by the Department. That form was updated in July 1996 to provide for recording up to three days' fishing activity on one page. No changes were made in the information required on the log. The proposed changes will update the log book reference to "Daily Lobster Log, DFG 122 (7/96)," and make the non-substantive change to incorporate the log by reference rather than print a copy in Title 14.

Any person denied the reclassification of his/her 2005-06 lobster operator permit by the Department would be able to appeal that denial to the Commission within 60 days.

Several non-substantive changes in punctuation and grammar have been made for clarity throughout the regulatory text.

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 in the Secretary of State Auditorium, 1500 11th Street, Sacramento, CA, on Thursday, May 5, 2005, 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 April 28, 2005 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than May 5, 2005 at the hearing in Sacramento. All written comments must include the true name and mailing address of the commentor.

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, Robert R. Treanor, 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 Robert R. Treanor or Sherrie Koell at the preceding address or phone number. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the above address. 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. 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 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 Business, 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. By allowing the free-market transfer of spiny lobster fishing permits the proposed action may provide a positive economic impact through the sale of a complete business package, i.e., a lobster fishing boat, traps and permit. This fishery is limited to southern California, south of Point Conception, Santa Barbara County, so there is no California spiny lobster fishing businesses in other states.

By establishing a 400 trap limit on persons who obtain a new lobster operator permit via the proposed permit transfer process some new fishermen might not be able to compete as effectively in the spiny lobster fishery. Some existing fishermen fish as few as 200 traps and others fish as many as 800 traps. As the number of permits issued via the transfer process increases over time the degree of disparity in the number of allowable traps will decrease, until at some future time all transferable lobster operator permits will have a limit of 400 traps and no fisherman will have a fishery advantage by virtue of number of traps.

- (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:

The proposed action will not have an immediate impact on the creation or elimination of jobs or businesses in the state. The permits that are designated as transferable will provide for the orderly sale of a complete business package for the harvest of California spiny lobster. The persons whose permits are designated as non-transferable will be able to continue fishing for California spiny lobster for as long as they chose to do so. The proposed action will not impact the expansion of businesses in California.

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

The Commission 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: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: 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

Robert R. Treanor
Executive Director

Date: March 7, 2005