

were transferable there would be no reason to have a lottery or any regulations establishing a lottery process. It is only some greedy fishermen who want a capacity goal of fewer than 300 fishermen in hopes that fewer fishermen will reduce supply and thus generate a better price for the catch. That theory is flawed. Regarding logbooks, fishermen don't want to record precise fishing location information for others to see.

Response: Comments noted. Permit transferability and capacity goal regulations are not within the scope of the proposed regulation changes.

John Duffy – Supports all of the proposed changes as needed to adapt to changes in the sea urchin fishery and markets since the original regulations were adopted.

Response: Comments noted.

Prior public comments and responses were included with the Pre-Adoption Statement of Reasons.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

The Department proposed an alternative that the industry consider moving to a lottery process where the number of permits issued would be determined based on the total number of renewals in the prior year versus the number of permits issued two years prior, which would ensure that a complete tally of all renewals would be known prior to conducting the lottery. See discussion in Section III(a), item 3. However, using this formula instead of continuing with the present one would result in a delay of the next lottery until 2009. Consequently, industry representatives favored continuing with the current lottery timelines, and instead change

the renewal deadline from June 30 to April 30, even if it means that some permit renewal applications come in after the lottery has been conducted.

(b) No Change Alternative:

If the proposed regulatory changes are not made, limitations on the number of days per week sea urchin permittees can fish will continue to constrain urchin harvesting and processing activities. If the urchin permit renewal process and late fee provisions are not amended, existing regulations will conflict with the new provisions established in Section 7852.2 of the Fish and Game Code. If the permit renewal deadline is not moved to April 30th, the date almost all other limited entry permits must be renewed, the urchin lottery process may be negatively impacted, and the Department's License and Revenue Branch will continue to have to perform an entirely separate renewal process just for urchin permittees, which is costly and burdensome. Additionally, if the commercial dive logbook regulatory amendments are not made, existing logbook regulations will be inconsistent with the logbook forms that will be in use by fishermen, making the provisions difficult or impossible to enforce.

(c) Consideration of Alternatives:

In view of the information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulation.

X. 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 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:

No anticipated adverse economic impacts. According to urchin fishing industry representatives, changes to the open fishing days will result in some unquantifiable but positive impact to permittees, crewmembers and urchin processors in terms of future sales.

(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:

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.

Updated Informative Digest/Policy Statement Overview

The proposed regulatory action would result in the following amendments:

1. Change urchin fishing days of the week as requested by fishermen and processors.

Current regulations of subsection 120.7(l), Title 14, CCR, specify the open fishing days each month for the commercial harvest of sea urchins. Depending on the month, the number of open fishing days ranges between two days per week and seven days per week.

Sea urchin fishery representatives recommend that the Commission change the authorized fishing days to ensure a more reliable supply of urchins to customers year round, thereby improving the economic sustainability of the fishery. The proposed regulatory changes would add a total of 42 open days to each fishing season, and would authorize fishing seven days per week from November through May, and four days per week from June through October. The open days for June through October would be Monday, Tuesday, Wednesday and Thursday.

In previous regulatory actions modifying urchin fishing days, the Department has noted that limiting the number of days is a management tool that is designed to curtail fishing effort, which may help maintain a sustainable urchin resource. Industry representatives describe that in today's sea urchin fishery, weather and limited market demand successfully work to control fishing effort, and too many closed fishing days results in an unstable supply of urchin.

2. Amend existing urchin fishing regulations to conform to new language in Section 7852.2 of the Fish and Game Code, regarding commercial fishing permit renewal late fees, late fee deadlines, and appeal provisions, as established by AB 1144 (Ch. 279, Stats. 2007).

New language in Section 7852.2 of the Fish and Game Code, effective April 1, 2008, provides as follows:

Notwithstanding any other provision of law, a commercial fishing license, stamp, permit, or other entitlement for which there is a renewal deadline shall not be renewed after that deadline, except as follows:

(a) In addition to the base fee for the license, stamp, permit, or other entitlement, the department shall assess a late fee for any renewal the application for which is received after the deadline, according to the following schedule:

- (1) One to 30 days after the deadline, a fee of one hundred twenty-five dollars (\$125).*
- (2) Thirty-one to 60 days after the deadline, a fee of two hundred fifty dollars (\$250).*
- (3) Sixty-one days or more after the deadline, a fee of five hundred dollars (\$500).*

(b) The department shall not waive the applicable late fee. The late fees specified in this section are applicable beginning in the 2008 license year, and shall be adjusted annually thereafter pursuant to Section 713.

(c) The department shall deny any application for renewal received after March 31 of the permit year following the year in which the applicant last held a valid permit for that fishery.

(d) An applicant who is denied renewal of a late application may submit a written appeal for renewal to the commission within 60 days of the date of the department's denial. The commission, upon consideration of the appeal, may grant renewal. If the commission grants renewal, it shall assess the applicable late fee pursuant to subdivision (a).

Existing regulations in subsection 120.7(c), Title 14, CCR establish commercial urchin fishing permit renewal provisions. The renewal deadline is presently June 30, and applications received after June 30 and before August 1 are assessed a \$50 late fee. Beyond July 31, there are no permit renewal provisions and applications postmarked after this date is not considered.

This regulatory language now conflicts with the new statutory provisions of Section 7852.2, which now prevails on matters surrounding renewal late fees and late payment penalty schedules for all commercial fishing permits. Therefore, amendment of the antiquated urchin permit regulations is needed for clarity and consistency, and to allow the sliding late fee schedule established by statute to be implemented as the Legislature intended for all fisheries.

Additionally, the new statute defines late permit renewal appeal provisions which now also apply to urchin fishing permits. Amendments to the regulatory language in subsection 120.7(g) is needed for clarity and consistency on this subject as well.

Subdivision 1050(c) of the Fish and Game Code gives authority to the Commission to prescribe the terms and conditions under which commercial fishing permits shall be issued by the Department. The proposed amendments to subsections 120.7(c) and 120.7(g) of Title 14 would be promulgated under this authority, and would result in striking the old urchin permit renewal and appeal provisions and replacing them with the statement that late fees, late fee deadlines, and late renewal appeal provisions are specified in Fish and Game Code Section 7852.2. The changes will also aid the Department's License and Revenue Branch staff and urchin permittees who hold multiple commercial fishing permits, as streamlining the permit renewal process will allow for simpler, more efficient and consistent procedures for all fishermen who hold limited entry or moratorium permits.

3. Change the urchin permit renewal deadline to April 30 each year effective in 2009; consistent with the date for other moratorium and restricted access permit programs.

The proposed regulatory action would result in changing the urchin permit renewal deadline to April 30, beginning in 2009, for consistency with most other

commercial fishing moratorium and restricted access permit renewal deadlines. The change is also needed because the present renewal deadline has created difficulties for the urchin lottery program, which is used to issue new urchin permits each year to urchin crewmembers under specified conditions.

The current language of subsection 120.7(c) specifies that the permit renewal deadline is June 30th, and through the next month a permittee may renew if the application is accompanied with payment of a \$50 late fee. Renewal applications are not accepted with postmarks dated after July 31. The number of new permits that are to be issued in the lottery is determined prior to August 1 each year.

Because the number of new permits issued in the lottery is calculated based upon the number of permits renewed in the current season compared with the number of permits issued for the prior season, an earlier renewal deadline in April, rather than June, will help to ensure that the calculation of the number of permits to issue in the lottery is accurate and based on complete information, as there will be more time between the renewal deadline and the time the number of permits to issue in the lottery is determined.

Urchin industry representatives support an earlier renewal deadline of April 30 and also recommend continuing with the existing lottery timelines, anticipating that most permittees will continue to renew by the deadline, thereby avoiding late renewal fees which can reach \$500 under the new statute. However, one result of the proposed regulatory and statutory changes will be that the number of permits issued in the lottery each year will continue to be determined prior to August 1, seven months before the final renewal opportunity expires. Consequently, if urchin permittees delay renewal of the permit until after the lottery is conducted, more new urchin permits could be issued in the lottery each year than would be issued under present rules.

4. Amend the form, regulations, and instructions for urchin fishing records (logbooks).

Subsection 120.7(m) specifies that any person who operates a vessel used for sea urchin fishing must prepare a daily record of such activity on a dive logbook and provide it to the Department on or before the 10th day of each month. The regulations would be changed so that all sea urchin permittees, instead of the vessel operator, would be required to complete dive records. This would mean that in the future, permittees diving off of a vessel operated by another person would be required to independently fill and return their own logbook documenting their personal diving activity.

Additionally, the current dive logbook form, incorporated by reference and in use since 1999, would be updated slightly for the next printing, and would include the following amendments:

- a) Fishery block charts, the grid system used by all fishermen to record the general location of their commercial fishing activity off California, were modified slightly to improve precision of the block data.
- b) Both a landmark name and the latitude/longitude of the site where each day's fishing activity occurs would be required. The existing logbook form allows the diver to select which type of location information to provide. The change is needed because the Department has found that having both types of location data is often necessary to precisely determine where fishing activity occurred.
- c) Changes to the format of the form are proposed regarding how the pounds of urchin and incidental catches shall be recorded.
- d) The average depth field would be eliminated, although the depth range fished would continue to be required.

5. Other changes to update information, correct typographic errors, and for clarity/consistency

The address of License and Revenue Branch in the present regulations is incorrect. Changes are proposed to require that payments and forms be made to the License and Revenue Branch office in Sacramento. Other minor changes are proposed to correct typographic errors and for clarity and consistency.

Action Taken

The Commission adopted the proposed changes to sea urchin regulations at the April 11th adoption hearing.