



commercial take of lobster but current sentence structure does not directly support this intent. The proposal clarifies the prohibition of the use of SCUBA and other breathing devices to take commercial lobster. Rewording the present regulation clarifies this portion of the section.

In proposed subsection (k), the regulation mandates that all lobster permit holders shall maintain lobster trap buoys in such a condition that buoy identification numbers are clearly readable. The purpose of marked buoys is to establish what permittee is utilizing a specific lobster trap. Ineffective methods of placing numbers on buoys or inadequate maintenance of buoys hinders the ability of enforcement officers to identify the permittee using the trap. The proposal will specifically stipulate that the numbers on the buoy are to be clearly readable so that the regulatory purpose of the buoy identification number is fully met.

In proposed subsection (g), the amendment clarifies wording relating to the prohibition of SCUBA and other types of breathing apparatus.

In subsection (e), the proposal strikes out language that was needed in 2005/2006 in regards to requirements to obtain a transferable lobster operator permit. That language is now obsolete and not needed. The three types of lobster permits are now clearly outlined. The proposal also strikes out related language in former subsection (g)(2) that pertains to how many applications will be processed for transferable lobster operator permits through March 31, 2008. This language is not needed and is obsolete.

The regulation also includes proposed revisions to improve the clarity and organization of the text. These amendments include the following:

- (1) Regulation text formerly in subsection (g) relating to Procedures and Timelines on Permit Transfers has been moved to subsection (r) with minor amendments, including updating the address of the Department of Fish and Game License and Revenue Branch to reflect the current location;
- (2) Regulation text formerly in subsection (j) relating to Exemption from Tidal Invertebrate Permit has been moved to subsection (a)(4); and
- (3) Regulation text formerly in subsection (t) relating to requesting a hearing upon the denial of a permit has been moved to subsection (f).

A non-substantive modification was made to the originally proposed language of the regulation. A grammatical error in proposed subsection (r)(3) was corrected.

The Fish and Game Commission adopted the proposed regulation at its August 6, 2009 meeting.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those Considerations:

Opposition:

(1) A letter was received from Philip Beguhl dated June 16, 2009 regarding the requirement of the proposed buoy numbering being kept in a readable condition. Mr. Beguhl's letter said that he thought it was not an inconvenience to the warden to have to scrape growth with a straight edge off of the buoys in order to see any obscured numbers due to natural growth of ocean organisms.

Response:

In regards to the condition a buoy must be kept in, one of the reasons for this proposal is due to the trap buoys being in such a poor condition that wardens are having to spend an excess amount of time cleaning buoys to determine ownership. It should be the responsibility of the fisherman to keep the buoy in a condition that the numbers can be easily read by the field game warden.

(2) A letter was received from Philip Beguhl dated June 8, 2009 regarding lobster escape gaps.

Response:

This proposed regulation change has nothing to do with the size of escape ports. That regulation is covered in the Fish and Game Code.

(3) A letter was received from Josh Fisher dated June 16, 2009 regarding lobster buoy markings as well as trap escape ports. Mr. Fisher asked that the regulation in regards to "color" be amended and the wording "condition" be used. Mr. Fisher felt that this wording would continue to allow fishermen to brand their buoys.

Response:

This proposed regulation change has nothing to do with the size of escape ports. That regulation is covered in the Fish and Game Code.

In regards to the wording "color" vs "condition", this is not a proposed change in the regulation. The regulation currently requires that the numbers on the buoys be of a contrasting color with the buoy. This enables the warden to read the numbers on the buoy. The contrasting coloring wording does not limit the ability of the fisherman to brand the buoy. The requirement is for a contrasting color and does not prevent branding.

(4) A letter was received from Ronald J. McNab dated June 23, 2009 regarding transferable lobster permits.

Response:

Mr. McNab's comments were not related to the proposed amendments; therefore, no response is required.

(5) At the June 25, 2009 Commission meeting, Paul Weakland asked if a person does not possess a lobster harvesting permit, can he lease traps to a lobster fisherman.

Response:

Mr. Weakland's comment was nonspecific in regards to the proposed amendments; therefore, no response is required.

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 Regulation Change:

No alternatives were identified.

(b) No Change Alternative:

The no change alternative was considered and rejected because the section will continue not to be as clearly direct in stating that the listed fishing districts are the only districts where commercial lobster fishing may take place. Additionally, not implementing the proposal will weaken enforcement's effectiveness in identifying traps by not having specific wording relating to the readability of lobster trap buoy identification

numbers. Clarification of wording relating to the prohibition of the use of SCUBA and other types of breathing apparatus would not be implemented.

(c) Consideration of Alternatives:

In view of 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 the 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:

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. The proposal clarifies and strengthens the enforceability of portions of the current regulation.

(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.