

Revised Proposed Regulatory Language

Section 29.80, Title 14, CCR, is amended to read:

§ 29.80. Gear Restrictions.

[No changes to subsection (a)]

(b) Hoop nets may be used to take spiny lobsters and all species of crabs. Between Point Arguello, Santa Barbara County, and the United States-Mexico border, not more than five hoop nets, as defined in (b)(1)(A) or (b)(1)(B), shall be possessed by a person when taking spiny lobster or crab, not to exceed a total of 10 hoop nets possessed when taking spiny lobster or crab, per vessel. The owner of the hoop net or person who placed the hoop net into the water shall raise the hoop net to the surface and inspect the contents of the hoop net at intervals not to exceed 2 hours.

[No changes to subsection (b)(1)]

(2) Any hoop net abandoned or left unchecked for more ~~than~~than 2 hours shall be considered abandoned and seized by any person authorized to enforce these regulations.

(3) Hoop nets used south of Point Arguello shall be marked with a surface buoy. The surface buoy shall be legibly marked to identify the operator's GO ID number as stated on the operator's sport fishing license or lobster report card. Hoop nets deployed from persons on shore or manmade structures connected to the shore are not required to be marked with a surface buoy.

[No changes to subsections (c)-(f)]

(g) Diving for crustaceans: In all ocean waters, except as provided in Section 29.05, skin and SCUBA divers may take crustaceans by the use of the hands only. Divers may not possess any hooked device while diving or attempting to dive. Divers may be in possession of spearfishing equipment so long as possession of such equipment is otherwise lawful and is not being used to aid in the take of crustaceans.

[No changes to subsections (h)-(j)]

Note: Authority cited: Sections 200, 202, 205, 215, ~~and~~ 220, 7075 and 7078, Fish and Game Code. Reference: Sections 200, 202, 205, 206, 215, ~~and~~ 220, 7050, 7055 and 7056, Fish and Game Code.

Section 29.90, Title 14, CCR, is amended to read:

§ 29.90. Spiny Lobsters.

(a) Open season: ~~From the Saturday preceding the first Wednesday in October through the first Wednesday after the 15th of March.~~From 6:00 a.m. on the Saturday preceding the first Wednesday in October through the first Wednesday after the 15th of March.

[No changes to subsection (b)]

~~(c) Minimum size: Three and one-fourth~~3 and 1/4 inches measured in a straight line on the mid-line of the back from the rear edge of the eye socket to the rear edge of the body shell. ~~Any lobster may be brought to the surface of the water for the purpose of measuring, but no undersize lobster may be brought aboard any boat, placed in any type of receiver, kept on the person or retained in any person's possession or under his direct control; all lobsters shall be measured immediately upon being brought to the surface of the water, and any undersize lobster shall be released immediately into the water. All lobsters shall be measured immediately and any undersize lobster shall be released immediately into the water. Divers shall measure lobsters while in the water and shall not remove undersized lobsters from the water. Hoop netters may measure lobsters out of the water, but no undersize lobster may be placed in any type of receiver, kept on the person or retained in any person's possession or under his or her direct control.~~

[No changes to subsections (d)-(e)]

Note: Authority cited: Sections 200, ~~202~~, 205, 219, ~~and 220~~, 265, 275, 7075 and 7078, Fish and Game Code. Reference: Sections 200, ~~202~~, 205, ~~210 and 220~~255, 275, 7050, 7055 and 7056, Fish and Game Code.

Article 5 of Chapter 5.5 of Subdivision 1 of Title 14, CCR is added to read:

Article 5 California Spiny Lobster Fishery Management Plan

Section 54.00, Title 14, CCR, is added to read:

§ 54.00 Purpose and Scope.

(a) This Article implements the Spiny Lobster Fishery Management Plan (Spiny Lobster FMP) as adopted and amended by the commission consistent with the goals, objectives and procedures of the Marine Life Management Act of 1999. This Article, in combination with other applicable provisions of the Fish and Game Code and Title 14, CCR, govern management and regulation of the spiny lobster resources and fisheries.

(b) Regulations implementing the Spiny Lobster FMP are found in this Chapter. Regulations specific to recreational take of spiny lobster are found in Chapter 1, Section 1.74 and Chapter 4, beginning with Section 27.00, of these regulations. Regulations specific to the commercial take of spiny lobster are included in Chapter 6, beginning with Section 121 of these regulations.

(c) Pursuant to Fish and Game Code Section 7071(b), Fish and Game Code sections 8251, 8252, 8254(c), and 8258 are made inoperative.

(d) Pursuant to Fish and Game Code Section 7071(b), Fish and Game Code sections, 7857(e), 7857(j), 8102, 8103, and 9004 are made inoperative as applied to the commercial spiny lobster fishery.

Note: Authority cited: Sections 7071, 7075 and 7078, Fish and Game Code. Reference: Sections 7050, 7055, 7056, 7070, 7071, 7075 and 7078, Fish and Game Code.

Section 54.01, Title 14, CCR, is added to read:

§ 54.01 Definitions.

(a) Catch, in the context of the harvest control rule, means the total weight of spiny lobster reported on commercial landing receipts in a fishing season.

(b) Catch per unit effort means the number of legal lobsters caught per trap pull for the commercial fishery.

(c) District closure means temporary or permanent closure of one or more Fishing Districts as defined in Fish and Game Code sections 11026, 11027, 11028, 11029, 11030, 11031, 11032, 11038, and 11039 to the commercial and/or recreational take of spiny lobster.

(d) Harvest control rule is defined in Section 50.01 of these regulations. In the Spiny Lobster FMP, the harvest control rule is a management framework consisting of three threshold reference points, a harvest control rule matrix, and a harvest control rule “toolbox” of conservation and management options.

(e) Harvest control rule matrix means the matrix prescribed in the Spiny Lobster FMP detailing the possible causes of having one, two, or all three threshold reference points crossed and the management response sequence for those scenarios.

(f) Harvest control rule toolbox means the conservation and management measures identified in the Spiny Lobster FMP harvest control rule that are available to the commission when threshold reference points are crossed and management action is recommended.

(g) Spawning Potential Ratio means the ratio of the number of eggs produced by a fished population over the number of eggs produced by an unfished population.

(h) Spiny lobster means *Panulirus interruptus* as defined in Fish and Game Code Section 8250.

(i) *Spiny Lobster FMP* means chapters 1-6 of the California Spiny Lobster Fishery Management Plan as approved by the commission on April 13, 2016, hereby incorporated by reference.

(j) Threshold reference point means a quantitative value that indicates that the status of a stock is at a level of concern and that management action may be needed to improve stock status. In the Spiny Lobster FMP, threshold reference points are based on commercial catch, catch per unit effort, and spawning potential ratio.

(k) Trap limit means a formal program adopted by the commission that limits the number of traps a commercial fisherman may fish at any one time during a season.

(l) Total allowable catch means a specified numerical catch objective for each fishing season, the attainment (or expected attainment) of which may cause closure of the fishery.

(m) Definitions contained in Chapter 1 and Article 1 of Chapter 5.5 of these regulations, and Chapters 1 and 2 of Division 0.5 of the Fish and Game Code apply to the spiny lobster fishery in addition to definitions of this Section.

Note: Authority cited: Sections 7075 and 7078, Fish and Game Code. Reference: Sections 7071, 7082, 8252, 11026, 11027, 11028, 11029, 11030, 11031, 11032, 11038 and 11039, Fish and Game Code.

Section 54.02, Title 14, CCR, is added to read:

§ 54.02 Management Process and Timing.

(a) Spiny lobster management will conform to the goals, objectives, criteria, procedures, and harvest control rule guidelines in the Spiny Lobster FMP, and other applicable state and federal laws and regulations.

(b) Monitoring and assessment of the spiny lobster fisheries will be conducted annually, including the collection and review of catch reports and fishing logbook information. The department will provide management recommendations to the commission as needed.

(c) Conservation and management measures may be developed, considered, and adopted in compliance the Administrative Procedures Act and implemented at any time of year to achieve management plan goals and objectives, and may apply to any or all management areas, or portions of management areas at the discretion of the commission.

Note: Authority cited: Sections 7075 and 7078, Fish and Game Code. Reference: Sections 7050, 7055, 7056, 7070, 7071, 7075 and 7078, Fish and Game Code.

Section 54.03, Title 14, CCR, is added to read:

§ 54.03 Harvest Control Rule.

(a) The harvest control rule adopted and described in the Spiny Lobster FMP shall form the management basis for the spiny lobster commercial and recreational fisheries. The harvest control rule is comprised of three components.

(1) Three threshold reference points as defined in the Spiny Lobster FMP based on commercial catch, catch per unit effort, and spawning potential ratio that serve as metrics to gauge the status of the spiny lobster fishery and resource.

(2) A harvest control rule matrix that guides the appropriate management responses based on the status and trends of each threshold reference point scenario.

(3) A suite of conservation and management measures in the harvest control rule “toolbox” giving the department and commission flexibility in addressing emerging and ongoing concerns within the spiny lobster fishery and resource.

(b) Monitoring and assessment of the harvest control rule threshold reference points will be conducted annually utilizing the best readily available data and other relevant information. If one or more of the threshold reference points are crossed, the harvest control rule matrix will guide the department management response, which may include consultation with fishing communities and other stakeholders when investigating the cause of an exceeded reference point.

(c) If the department determines that a management response is warranted, the commission may adopt one or more of the conservation and management measures specified in the Spiny Lobster FMP harvest control rule “toolbox” pursuant to Section 54.03(a) of these regulations.

Note: Authority cited: Sections 7072 and 7082, Fish and Game Code. Reference: Sections 7050, 7055, 7056, 7070, 7071, 7075 and 7078, Fish and Game Code.

Section 121, Title 14, CCR, is amended to read:

§ 121. Lobsters, Spiny. Open Season and Possession During Closed Season.

(a) Spiny lobsters may be taken only between the first Wednesday in October and the first Wednesday after the 15th of March.

(b) No spiny lobsters may be sold or possessed during the closed season except as follows: Lobsters taken or imported during the open season which were cooked and frozen or frozen prior to the close of the open season, and lobsters imported into California during the twenty-six (26) days following the close of the open season, provided such lobsters were cooked and frozen or frozen prior to importation. During the closed season, after the twenty-six (26) day importation period, no spiny lobsters may be possessed on any boat, barge, or vessel.

Note: Authority cited: Sections 240 and 2365, Fish and Game Code. Reference: Sections 240, 2365 and 8254, Fish and Game Code.

Section 121.5, Title 14, CCR, is amended to read:

§ 121.5, Lobster, Spiny. Minimum Size and Verification of Size.

(a) No spiny lobster less than 3 and 1/4 inches in length measured in a straight line from the rear edge of the eye socket to the rear edge of the body shell, both points to be on the midline of the back, may be taken, possessed, purchased, or sold.

(b) Every person taking spiny lobster shall carry a fixed caliper measuring device and shall measure any lobster immediately on removal from the trap and if it is found to be undersize the spiny lobster shall be returned to the water immediately. A trap shall be serviced prior to any additional trap being brought aboard a vessel.

~~(a)(c)~~ All California spiny lobsters (*Panulirus interruptus*) taken, possessed, transported or sold must be maintained in such a condition that their size can be determined as described in Section 121.5(a) of these regulations pursuant to Fish and Game Code Section 8252 until prepared for immediate consumption or sold to the ultimate consumer except as provided for in subsection (b)(d) below.

~~(b)(d)~~ California sSpiny lobsters may be split along the midline of the carapace by persons licensed pursuant to Fish and Game Code Section 8034 (Fish Processors License) or Section 8037 (Commercial Fish Business License) provided both halves of each lobster are kept together by banding or packaging until either displayed for purchase by the ultimate consumer or prepared for immediate consumption.

Note: Authority cited: Sections 240, 2365 and 8254, Fish and Game Code. Reference: Sections 240, 2365 and 8254, Fish and Game Code.

Section 122, Title 14, CCR, is amended to read:

§ 122. Lobsters, Permits to Take Spiny Lobster Permits and Restricted Areas.

(a) Classes of Lobster Permits.

(1) There is a transferable lobster operator permit, a non-transferable lobster operator permit and a lobster crewmember permit.

(2) Under operator permits issued by the department, licensed commercial fishermen may take spiny lobsters for commercial purposes, but only with traps used pursuant to Fish and Game Code Section 9010, except that such traps shall only be used in

Districts 18, 19, 20A, and that part of District 20 southerly of Santa Catalina Island between Southeast Rock and China Point. No other method of take is authorized for the commercial harvest of spiny lobsters.

(3) Any licensed commercial fisherman ~~not eligible to obtain a lobster operator permit pursuant to this section~~ who does not possess a valid transferable or non-transferable lobster operator permit may purchase a lobster crewmember permit, authorizing him/her to accompany ~~the holder of a lobster operator permit holder~~ and to assist ~~that person~~ the lobster operator permit holder in the commercial take of spiny lobster.

(4) Exemption from Tidal Invertebrate Permit. A lobster operator permit holder or a lobster crewmember permit holder operating under the provisions of a lobster operator permit is not required to possess a Tidal Invertebrate Permit, but is subject to ~~the provisions of Section 123~~ of these regulations.

(b) Permit Renewal.

~~(b)~~ (1) Each lobster operator permit shall be issued annually and shall be valid for the period of the commercial lobster season. Each operator and crewmember permittee shall have his/her permit in possession when taking lobsters.

(2) Applicants for renewal of a lobster operator permit shall be eligible to renew a lobster operator permit of the same classification, if they have held a valid lobster operator permit that has not been suspended or revoked, in the immediately preceding permit year.

(3) No more than 2 lobster operator permits shall be issued to a licensed commercial fisherman.

(4) Procedures and Deadline for Permit Renewal. Applications for renewal of transferable and non-transferable lobster operator permits must be received by the department or, if mailed, postmarked no later than April 30 of each year. Late fees, late fee deadlines, and late renewal appeal provisions are specified in Fish and Game Code Section 7852.2. Any person denied a permit under this Section may submit a written request for an appeal to the commission to show cause why his/her permit request should not be denied. Such request must be received by the commission within 60 days of the department's denial.

(c) Permit Transfers, Procedures, and Timelines.

~~(c)~~ (1) Except as provided in this Section, a permit shall not be assigned or transferred, and any right or privilege granted thereunder is subject to revocation, without notice, by the Fish and Game Commission ~~commission~~, at any time.

(2) A person with a valid transferable lobster operator permit that has not been suspended or revoked may transfer his/her permit to another person licensed as a California commercial fisherman. The permit holder or the estate of the deceased permit holder shall submit the notarized transfer application and the nonrefundable permit-transfer fee specified in Section 705 for each permit transfer. The transfer shall take effect on the date written notice of approval of the application is given to the transferee by the department. The permit holder shall transfer all department-issued trap tags to the transferee after the permit transfer has been approved by the department. The lobster operator permit shall be valid for the remainder of the permit year and may be renewed in subsequent years pursuant to this Section.

(A) If a transferable lobster operator permit is transferred to a person with a valid transferable lobster operator permit and non-transferable lobster operator permit, the non-transferable lobster operator permit shall become null and void and the permit and

trap tags shall be immediately surrendered to the department's License and Revenue Branch.

(3) An application for a transfer of a lobster operator permit shall be deferred when the current permit holder is awaiting final resolution of any pending criminal, civil and/or administrative action that could affect the status of the permit.

(4) Upon the death of a person with a valid transferable lobster operator permit, that person's estate shall immediately, temporarily relinquish the permit to the department's License and Revenue Branch. Trap tags shall also be temporarily relinquished to the department's License and Revenue Branch. The estate may renew the permit as provided for in this Section if needed to keep the permit valid. The estate may transfer the permit pursuant to this Section no later than 2 years from the date of death of the permit holder as listed on the death certificate.

(5) Upon the death of a person with a valid non-transferable lobster operator permit, the permit shall be null and void and the estate shall immediately surrender the permit and trap tags to the department's License and Revenue Branch.

(6) Any applicant who is denied transfer of a transferable lobster operator permit may submit a written request for an appeal to the commission within 60 days of the date of the department's denial.

~~(d) Applicants for the renewal of lobster operator permits shall have held a valid lobster operator permit, that has not been suspended or revoked, in the immediately preceding permit year.~~

~~(e) The holder of a valid lobster operator permit that has not been suspended or revoked, from the immediately preceding permit year shall be eligible to purchase a lobster operator permit of the same classification.~~

~~(f) Procedures and Deadline for Permit Renewal.~~

~~Applications for renewal of transferable and non-transferable lobster operator permits must be received by the department or if mailed, postmarked not later than April 30 of each year. Late fees, late fee deadlines, and late renewal appeal provisions are specified in Fish and Game Code Section 7852.2. Any person denied a permit under these regulations may request a hearing before the commission to show cause why his/her permit request should not be denied. Such request must be received by the commission within 60 days of the department's denial.~~

~~(g) No SCUBA equipment or other breathing device may be used to assist in the take of lobster on any boat being operated pursuant to a commercial lobster permit.~~

~~(h) All provisions of the Fish and Game Code and regulations of the Fish and Game Commission relating to lobsters shall be a condition of all permits to be fully performed by the holders thereof, their agents, servants, employees, or those acting under their direction or control.~~

~~(i) No lobster trap used under authority of this permit shall be pulled or raised or placed in the water between one hour after sunset to one hour before sunrise.~~

~~(j) All lobster traps and receivers impounding lobsters shall be individually buoyed. The buoys must be on the surface of the water, except after the first Tuesday in October when buoys may be submerged by means of metallic timing devices, commonly called "pop-ups."~~

~~(k) Each buoy identifying a lobster trap shall display the commercial fishing license identification number of the lobster operator permit holder followed by the letter P. The commercial fishing license number and the letter P shall be in a color which contrasts with that of the buoy and shall be at least one (1) inch in height and at least one-eighth~~

~~(1/8) inch in width. All lobster permit holders shall maintain lobster trap buoys in such a condition that buoy identifying numbers are clearly readable.~~

~~(l) Any person pulling or raising lobster traps and receivers bearing a commercial fishing license number other than his/her own must have in his/her possession from the party who holds the permit assigned to said gear written permission to pull the traps, or receivers.~~

~~(m) The employees of the department may disturb or move any lobster trap at any time while such employees are engaged in the performance of their official duties and shall inspect any lobster trap to determine whether it is in compliance with all provisions of the Fish and Game Code and regulations of the commission.~~

~~(n) During the closed season for the taking of spiny lobster, no buoy attached to any trap may be marked in such manner as to identify the trap as a lobster trap, except that legally marked lobster traps may be placed in the water not more than six (6) days before the opening of the season and may remain in the water for not more than six (6) days after the close of the season, if the door or doors to such traps are wired open, the trap is unbaited, the buoy remains at the surface of the ocean, and no attempt is made to take spiny lobsters.~~

~~(e)~~(d) Restricted fishing areasFishing Areas.

(1) No lobster trap used under the authority of this permit shall be used within 750 feet of any publicly-owned pier, wharf, jetty or breakwater; however, such traps may be used to within 75 feet of any privately-owned pier, wharf, jetty or breakwater.

(2) No lobster traps shall be set or operated within 250 feet of the following specified navigation channels.

~~(A) Newport Bay: Starting at the demarcation line at the entrance to Newport Bay and extension of the west side channel line, proceed southeasterly on a bearing of 151° magnetic one nautical mile; then northeasterly 44° magnetic 500 feet; then northwesterly 331° magnetic one nautical mile to the demarcation line and an extension of the east side channel line.~~

~~(B) Dana Point Harbor: Starting from Dana Point east jetty light "6," proceed on a bearing of 120° magnetic 450 yards to red buoy "4"; then south 180° magnetic one nautical mile; then westerly 270°, 300 yards; then north 0° magnetic approximately one nautical mile to Dana Point Harbor light "5."~~

~~(C) Oceanside Harbor: Starting from Oceanside Harbor breakwater light "1," proceed on a bearing of 225° magnetic for one nautical mile; then southeast for 450 yards on a bearing of 110° magnetic; then northeast on a bearing of 35° magnetic for one nautical mile to Oceanside Harbor south jetty light "2"; then west-southwest on a bearing of 253° to the point of beginning at Oceanside Harbor breakwater light "1."~~

(A) Newport Bay Harbor entrance: This area is bounded by straight lines connecting the following points in the order listed:

33° 35.316' N. lat. 117° 52.744' W. long.;

33° 34.365' N. lat. 117° 52.374' W. long.;

33° 34.412' N. lat. 117° 52.294' W. long.;

33° 35.368' N. lat. 117° 52.658' W. long.; and

33° 35.316' N. lat. 117° 52.744' W. long.

(B) Dana Point Harbor entrance: This area is bounded by straight lines connecting the following points in the order listed:

33° 27.262' N. lat. 117° 41.492' W. long.;

33° 26.289' N. lat. 117° 41.721' W. long.;

33° 26.254' N. lat. 117° 41.509' W. long.;
33° 27.201' N. lat. 117° 41.286' W. long.;
33° 27.409' N. lat. 117° 41.522' W. long.; and
33° 27.262' N. lat. 117° 41.492' W. long.

(C) Oceanside Harbor entrance: This area is bounded by straight lines connecting the following points in the order listed:

33° 12.344' N. lat. 117° 24.166' W. long.;
33° 12.332' N. lat. 117° 24.164' W. long.;
33° 11.775' N. lat. 117° 25.155' W. long.;
33° 11.659' N. lat. 117° 24.928' W. long.;
33° 12.233' N. lat. 117° 24.047' W. long.;
33° 12.362' N. lat. 117° 23.975' W. long.; and
33° 12.344' N. lat. 117° 24.166' W. long.

~~(p)~~(e) Records. Pursuant to ~~section~~Section 190 of these regulations, any person who owns and/or operates any vessel used to take lobsters for commercial purposes shall complete and submit an accurate record of his/her lobster fishing activities on a form (Daily Lobster Log, ~~DFGDFW 122 (7/96~~REV. 03/04/16), incorporated herein by reference) provided by the department.

~~(q)~~(f) The person required to submit logs pursuant to Section 190 of these regulations shall have complied with said regulations during the immediate past license year, or during the last year such person held a permit, in order to be eligible for a successive year annual permit.

(g) All lobster operator permit holders fishing jointly on one vessel shall both be liable for any violation incurred by any of the lobster operator permit holders or crew-member permit holders fishing from that vessel.

(h) No SCUBA or other underwater breathing apparatus equipment shall be used to take lobster, except that this equipment may be used to locate and secure traps for retrieval. Lobsters contained in a trap that has been secured using SCUBA, or any other underwater breathing apparatus equipment, may be possessed after the trap has been serviced aboard the vessel only if the secured trap(s) has not exceeded the trap service interval requirement as specified in subsection 122.2(d) of these regulations.

~~(r) Procedures, Timelines on Permit Transfers.~~

~~(1) The holder of a valid transferable lobster operator permit that has not been suspended or revoked may transfer his/her permit to another person licensed as a California commercial fisherman. The application to transfer a permit shall be in the form of a notarized letter from the existing permit holder identifying the transferee and shall include the original transferable lobster operator permit, a copy of the transferee's commercial fishing license and a nonrefundable permit-transfer fee as specified in Section 705. The application shall be submitted to the department's License and Revenue Branch, 1740 N. Market Blvd., Sacramento, CA 95834. The transferable lobster operator permit shall be valid for the remainder of the current lobster season and may be renewed in subsequent years pursuant to these regulations. If the transferee holds a non-transferable lobster operator permit, that permit shall be cancelled.~~

~~(2) The estate of the holder of a transferable lobster operator permit may renew that permit as provided for in these regulations if needed to keep it valid. The estate of the decedent may transfer that permit pursuant to these regulations no later than one year from the date of death of the permit holder as listed on the death certificate.~~

~~(3) Upon the death of the individual to whom a non-transferable Lobster Operator Permit is issued, the permit shall become null and void.~~

Note: Authority cited: Sections 1050, 7075, 7078, 8254 and 8259, Fish and Game Code. Reference: Sections 1050, 2365, 7050, 7055, 7056, 7071, 7852.2, 8026, 8043, 8046, 8250-8259, 9002-9006~~8250, 8250.5, 8254, 9002, 9002.5, 9005, 9006~~ and 9010, Fish and Game Code.

Section 122.1 Title 14, CCR, is added to read:

§ 122.1 Lobster Buoys and Trap Tags

(a) All lobster traps and receivers impounding lobsters shall be individually buoyed. The buoys must be on the surface of the water, except after the first Tuesday in October when buoys may be submerged by means of metallic timing devices with a timed delay (commonly called “pop-ups”) that does not exceed the trap service interval requirement as specified in subsection 122.2(d) of these regulations.

(b) Each buoy identifying a lobster trap shall display the commercial fishing license identification number of the lobster operator permit holder followed by the letter P. The commercial fishing license identification number and the letter P shall be in a color that contrasts with that of the buoy and shall be at least 1 inch in height and at least 1/8 inch in width. All lobster operator permit holders shall maintain lobster trap buoys in such a condition that buoy identifying numbers are clearly readable.

(c) Deployed lobster traps and those possessed by a lobster operator permit holder aboard a vessel shall have a valid department-issued trap tag directly attached to the trap. If the information on the trap tag is illegible or incorrect or if the trap tag is missing from the trap for any reason, the trap shall be considered not in compliance, and shall not be used to take spiny lobster for commercial purposes.

(1) Lobster trap tags. A lobster operator permit holder shall be issued 300 trap tags for use during that season for each valid lobster operator permit in possession.

(2) Replacement procedures for catastrophic loss of trap tags.

(A) A lobster operator permit holder shall only be eligible to receive replacement trap tags for trap tags lost due to catastrophic loss.

(B) Catastrophic trap tag loss is defined as the cumulative loss of 75 or more trap tags for each valid lobster operator permit due to events beyond the lobster operator permit holder’s control, such as weather, force majeure and acts of God.

(C) The lobster operator permit holder shall submit to the department’s License and Revenue Branch the affidavit signed under penalty of perjury by the lobster operator permit holder and nonrefundable fee for each replacement tag as specified in Section 705 of these regulations.

(D) An affidavit for trap tag replacement due to catastrophic loss, with a description of the factual circumstances consistent with subsection (B) above, shall be approved by the department prior to any replacement trap tags being issued.

(E) Any trap tag reported as lost and subsequently recovered during the season is invalid and shall be immediately returned to the department’s License and Revenue Branch.

Note: Authority cited: Sections 7075 and 7078, Fish and Game Code. Reference: Sections 7050, 7055, 7056, 8250.5, 9002 and 9010, Fish and Game Code.

Section 122.2, Title 14, CCR, is added to read:

§ 122.2 Pulling Lobster Traps.

(a) No lobster trap shall be pulled or raised or placed in the water between one hour after sunset to one hour before sunrise.

(b) During the closed season for the taking of spiny lobster, no buoy attached to any trap may be marked in such manner as to identify the trap as a lobster trap, except that legally marked lobster traps may be placed in the water not more than 9 days before the opening of the season and may remain in the water for not more than 9 days after the close of the season, if the doors to such traps are wired open, the trap is unbaited, the buoy remains at the surface of the ocean, and no attempt is made to take lobsters.

(c) Lobster traps may be set and baited 24 hours in advance of the opening date of the lobster season if no other attempt is made to take or possess the lobsters.

(d) Trap Service Interval Requirement. A deployed lobster trap shall be raised, cleaned of debris, serviced to ensure mechanisms are properly functioning, and emptied at intervals not to exceed 168 hours except that lobster traps are not required to be serviced during the 9-day pre- and post- season period as described in subsection (b).

(e) No trap shall be abandoned in the waters of this state. Lobster traps not retrieved 14 days after the close of the commercial lobster season shall be considered "abandoned."

(f) By April 15 of each year, every lobster operator permit holder shall submit a trap loss affidavit, as specified in Section 705, for each permit he/she holds to the address listed on the affidavit.

(1) If a permit is transferred during the season, only the lobster operator permit holder who is in possession of that permit at the end of the season is required to submit the affidavit.

(2) All trap tags shall be retained by each lobster operator permit holder until the beginning of the next lobster season.

(g) The employees of the department may disturb or move any lobster trap at any time while such employees are engaged in the performance of their official duties and may inspect any lobster trap to determine whether it is in compliance with applicable provisions of the Fish and Game Code and this Chapter.

(h) No lobster operator permit holder shall possess, use, control, or operate any lobster trap with a trap tag bearing a permit number other than his/her own nor any receivers bearing a commercial fishing license identification number other than his/her own except:

(1) To retrieve from the ocean and transport to shore lobster trap(s) of another lobster operator permit holder that were lost, damaged, abandoned or otherwise derelict, provided that:

(A) No more than 6 derelict lobster traps may be retrieved per fishing trip.

(B) Lobsters in any retrieved lobster trap(s) shall not be retained and shall be returned to the ocean waters immediately.

(C) Immediately upon retrieval of any lobster trap(s), the lobster operator permit holder retrieving the traps shall document in the retrieving vessel's log the date and time of trap retrieval, number of retrieved lobster traps, location of retrieval, and retrieved trap tag information.

(D) Any retrieved lobster trap(s) shall be transported to shore during the same fishing trip that retrieval took place.

(2) Under a waiver granted by the department, pulling, servicing, or transporting receivers or more than 6 lobster traps by another lobster operator permit holder is allowed if:

(A) The lobster operator permit holder is unable to pull, service or transport his/her traps or receivers due to circumstances beyond the control of the permit holder.

(B) A request for the waiver has been submitted in writing to the department's License and Revenue Branch. The waiver shall include:

1. Name and permit number of the lobster operator permit holder requesting the waiver;

2. Name and permit number of the lobster operator permit holder pulling, servicing or transporting the traps and receivers;

3. Proposed time period and location to conduct operations; and

4. Lobster trap tag numbers or number of traps and receivers to be pulled, serviced or transported.

(C) The department may request other related information prior to granting or denying the waiver.

(D) The waiver may include conditions such as time period to conduct operations, landing prohibitions or any other criteria the department deems necessary.

(E) A copy of the waiver approved by the department shall be in the possession of the lobster operator permit holder when pulling, servicing, or transporting the traps and receivers.

(F) The lobster operator permit holder pulling, servicing, or transporting the traps and receivers may retain lobsters caught in the traps or contained in the receivers unless otherwise specified as a condition of the waiver.

(3) From 15 days after the close of the commercial lobster season through September 15, an unlimited number of lobster traps may be retrieved by a lobster operator permit holder or a department designee and transported to shore.

Note: Authority cited: Sections 1050 and 7078, Fish and Game Code. Reference: Sections 7050, 7055, 7056, 8250.5, 8251, 9002 and 9010, Fish and Game Code.

Section 705, Title 14, CCR, is amended to read:

§ 705. Commercial Fishing Applications, Permits, Tags and Fees.

<i>(a) Application</i>	<i>Permit Fees (US\$)</i>	<i>Processing Fees (US\$)</i>
[No changes to subsection (a)(1)-(a)(8)(S)]		
<u>(T) Lobster Operator Permit and Trap Tags</u>		<u>765.25</u>
<i>(b) Transfer, Upgrade, or Change of Ownership</i>		<i>Fees (US\$)</i>

(1) Lobster Operator Permit Transfer Application, DFW 1702 (New 2/2016), incorporated by reference herein. 500.00

[No changes to subsection (b)(2)-(b)(11)(C)]

(c) Tags and Miscellaneous

Fees (US\$)

[No changes to subsection (c)(1)-(c)(4)]

(5) Lobster Operator Permit Catastrophic Lost Trap Tag Affidavit, DFW 1701 (New 2/2016), incorporated by reference herein.

(6) Lobster Operator Permit Catastrophic Lost Trap Tag Fee per tag.

1.25

(7) End of Season Spiny Lobster Trap Loss Reporting Affidavit, DFW 1020 (New 02/18/16), incorporated by reference herein.

[No changes to subsection (d)]

Note: Authority cited: Sections 713 and 1050, Fish and Game Code. Reference: Sections 713 and 1050, Fish and Game Code.