

subsection 122.1(b) in this rulemaking) will be sufficient for enforcing the new trap tag requirements. Any trap marked with a surface buoy with the letter P is required to have a Department issued trap tag.

Based on further review of the regulatory text by the Department and one comment from the public that raised a practical consideration regarding hoop net deployment from the shore or manmade structures that are connected to the shore, the following modifications have been made to the proposed regulations for clarity purposes.

- 1) Subsection 29.80(b)(3), the proposed regulation has been revised by replacing the word “and” with “or” to clarify that hoop nets deployed from persons on shore or manmade structures connected to the shore are not required to be marked with a surface buoy.
- 2) Subsection 122.2(i), the proposed regulation has been revised with the addition of “during the spiny lobster fishing season” to clarify that beginning with the 2017-2018 lobster season, no lobster operator permit holder shall possess, use, control, or operate any lobster traps during the spiny lobster fishing season without a valid trap tag assigned to that lobster operator permit holder or receivers bearing a commercial fishing license identification number other than their own.
- 3) Other minor, non-substantive changes were made to Section 122.2 to add a line break between subsections 122.2(d) and 122.2(d)(1) and fix punctuation at the end of the noted Reference section and in subsection 122.2(i)(2)(B)4.

On June 22, 2016, the Commission adopted each of the proposed regulations with the non-substantive edits described above for spiny lobster except the following:

- 1) Commercial buoy tag requirements under subsection 122.1(c).
- 2) Proposed subsection 29.90(f) and 121.5(e), marking of sport caught lobsters and commercial market prohibitions.

As such, the following changes were made in the final adopted regulatory text of subsection 122.1(c):

1. Remove all references to the proposed commercial buoy tag requirements, including paragraph (2) of subsection 122.1(c).
2. Renumber originally proposed subsection 122.1(c)(3) as paragraph (2) under subsection 122.1(c).

Proposed subsection 29.90(f) and 121.5(e), marking of sport caught lobsters and

commercial market prohibitions, were removed entirely from the final adopted regulatory text.

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

A total of 141 comments (from 30 commenters) were received from the public on the proposed regulatory amendments and additions to the recreational and commercial spiny lobster fishing regulations. A majority of comments fell into the following general topics: trap limit/trap tag program, recreational use of hoop nets, market restrictions for tail-clipped/hole-punched sport caught lobsters, and permits/permitting.

All written and verbal comments received by the Commission on the proposed regulatory changes are summarized and responded to in this Final Statement of Reasons for Regulatory Action in Table 1, Attachment A. The public comment period closed with the adoption of the spiny lobster regulations at the June 22, 2016 Commission meeting.

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 Wildlife
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

No alternatives were identified.

(b) No Change Alternative:

Do not adopt the California Spiny Lobster Fishery Management Plan (FMP) implementing regulations and proposed commercial and recreational regulatory changes. Continue managing the resource and fishery without a comprehensive management plan under current regulations. This alternative does nothing to promote a comprehensive

management plan for the spiny lobster fisheries and does not bring spiny lobster management into conformance with the Marine Life Management Act (MLMA) through adoption of implementing regulations as directed by the Legislature. While this alternative is not expected to result in immediate adverse impacts to the spiny lobster resource and fisheries, due to the generally conservative nature of current regulations (e.g., season and size limits), it would forego the greater opportunity for sustainable management under a comprehensive fishery management plan as required by the MLMA. The proposed commercial and recreational changes will clarify and improve enforcement of existing regulations and provide for a more orderly fishery.

(c) Consideration of Alternatives:

Other regulatory proposals considered by the Commission but not included in this regulatory proposal:

The Lobster Advisory Committee (LAC) consensus and Department recommendations were presented to the Commission at the April 2015 meeting. At the June 2015 meeting, the Commission directed the Department to develop a regulatory package that included all Department and LAC recommendations except the following three below.

1. Restricting the use of mechanized pullers in the recreational fishery only to persons in possession of proof of disability. This **restriction** was proposed to reduce the illegal tampering of commercial traps by recreational fishermen using mechanized hoop net pullers. However, illegal use of mechanized pullers is not a commonly observed enforcement problem and as proposed would penalize the lawful fishermen using mechanized pullers due to the very few fishermen that may abuse the use of this gear.
2. A phase-in approach to the commercial trap limit. The phase-in trap limit approach was proposed by the LAC to provide **fishermen** with an alternative means of fishing up to 600 traps while waiting to purchase a second permit following the implementation of the commercial trap limit. The phase in approach was proposed in 2013 when the trap limit was thought to become effective for the 2015-2016 season. The trap limit will not be effective until the 2017-2018 season, which has provided individuals wanting to purchase a second permit with sufficient time to acquire a transferable permit. In addition, it would be difficult for the Department to implement and administer the program as proposed by the LAC.

3. Clarifying that branding of commercial trap floats is allowed. The branding of commercial floats is allowed under current regulations (current subsection 122(k) moved to subsection 122.1(b) in this rulemaking). The regulation currently requires the commercial fishing license number to “be in color which contrasts with that of the buoy.” The branding of commercial fishing license number onto floats will result in a color, which contrasts with that of the float. Therefore, the proposed regulation is currently covered under existing regulation.

- (d) Description of Reasonable Alternatives That Would Lessen Adverse Impact on Small Business:

None.

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 because the regulatory action will not substantially increase compliance costs, is not anticipated to impact harvest quantities, and only applies to a fishery that is unique to the state of California. The commercial spiny lobster fishery extends from Point Conception in Santa Barbara County to the U.S./Mexico border. The recreational spiny lobster fishery covers the same range but also extends further north into San Luis Obispo County.

- (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; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment:

The Commission anticipates no negative impacts on the creation or elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses because the proposed action will not significantly increase costs or reduce harvest quotas. These actions are intended to promote orderly commercial and recreational fisheries while

ensuring the long-term sustainability of the fisheries and spiny lobster resource.

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

The Commission anticipates an increase in the commercial lobster operator permit fee due to the proposed trap tag program to be approximately \$395 per permit. Permit holders may have the potential for a substantial gain from expanded permit transfer options and potential fuel savings with the increase in time for the maximum trap servicing requirement. The Commission is not aware of any cost impacts in the recreational lobster fishery, 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, Government Code:

None.

(h) Effect on Housing Costs:

None.

Updated Informative Digest/Policy Statement Overview

Under current regulations, the management of the California spiny lobster fishery is contained under multiple sections (sections 29.80, 29.90, 29.91, 121, 121.5 and 122) of Title 14 of the California Code of Regulations (CCR). Section 29.80 provides general gear restrictions for the recreational take of crustaceans. Section 29.90 provides recreational fishery regulations specific to spiny lobster with report card requirements for the recreational fishery found in Section 29.91. Section 121 regulates the possession of spiny lobster during the closed season. Section 121.5 regulates the processing of spiny lobster. Section 122 provides regulations for the commercial fishery, including permit requirements, gear provisions, trap servicing requirements, restricted fishing areas, permit transfers, and logbook requirements.

In accordance with the Marine Life Management Act (MLMA) of 1999 (Fish and Game Code (FGC) Sections 7050-7090), regulations are proposed to implement a California Spiny Lobster Fishery Management Plan and to amend existing recreational and commercial spiny lobster fishing regulations to manage the spiny lobster resource at a sustainable level and support orderly fisheries. It is the policy of the State to ensure the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the State (FGC Section 7050(b)). The MLMA contemplates the management of state fishery resources through FMPs developed by the Department of Fish and Wildlife (Department) and adopted by the Fish and Game Commission (Commission) (FGC sections 7072, 7075 and 7078).

FGC subsection 7071(b) provides authority for the Commission to adopt regulations that implement a fishery management plan or plan amendment and make inoperative any fishery management statute that applies to that fishery. To implement the conservation and management measurements identified in the California Spiny Lobster FMP, including a proposed trap limit program, the implementing regulations of this FMP will render the following sections of the FGC inoperative once they are adopted:

- 1) FGC sections 8251, 8252, and 8258. These sections prescribe the commercial season length, size limit, and list the Districts where commercial lobster traps may be used. The FMP contemplates changes to season length, minimum size and district closures as possible future conservation and management measures. The commercial season length and size limit will be moved into Title 14, CCR, reflecting the Commission's authority to make future adjustments.
- 2) FGC sections 7857(e), 7857(j), 8102, 8103, and 8254(c). These sections state the conditions for issuing and transferring commercial fishing permits and lobster operator permit fees. Each will be made inoperative as they apply to the spiny lobster fishery to be consistent with the commercial spiny lobster limited entry fishery permit program described in the FMP and proposed trap limit program.
- 3) FGC Section 9004: This section requires commercial fishermen to service any deployed trap every 96 hours. The proposed trap servicing regulation in new

Section 122.2 will extend the servicing requirement to every 168 hours. As such, this section will be rendered inoperative as applied to the spiny lobster fishery.

The California Spiny Lobster FMP, adopted by the Commission at its April 13, 2016 meeting, establishes a management program for the spiny lobster recreational and commercial fisheries and details the procedures by which the spiny lobster resource will be managed by the Department. The proposed regulations would implement the FMP in accordance with the policy and conservation goals enumerated in the MLMA. The proposed implementing regulations are divided into three parts: 1) new regulations to implement the FMP, 2) amendments and additions to the recreational fishing regulations, and 3) amendments and additions to the commercial fishing regulations. The following is a summary of the proposed changes to Title 14, CCR:

- 1) Establish a new Article in Chapter 5.5, Subdivision 1, Division 1, Title 14, CCR, and add new sections 54.00, 54.01, 54.02, and 54.03. The proposed new sections will:
 - a. describe the purpose and scope of the California Spiny Lobster FMP;
 - b. provide relevant definitions used in the California Spiny Lobster FMP;
 - c. describe management processes and timing; and
 - d. describe the harvest control rule (HCR) as the management basis for the California Spiny Lobster FMP.

- 2) Amendments are proposed to existing recreational lobster fishery regulations in subsections (b) and (g) of Section 29.80 and subsections (a), (c), and (f) of Section 29.90. If adopted, the proposed amendments will:
 - a. Provide an option to require hole-punching or fin-clipping of recreationally caught lobsters, with commercial market restrictions, to distinguish recreational catch from commercial catch for enforcement purposes.
 - b. Delay the start of the recreational season six hours from the current start time of 12:01 a.m. to 6:00 a.m. for safety purposes.
 - c. Require buoy marking of hoop nets used south of Point Arguello for identification and enforcement purposes.
 - d. Clarify existing language on the possession of a hooked device while taking lobster. This regulatory change will provide clarification for both recreational divers and enforcement.
 - e. Clarify measuring requirements in order to allow for measuring lobster aboard a boat. The proposed change will allow hoop netters to bring spiny lobster aboard a vessel where they can be measured safely.
 - f. Make editorial changes to improve clarity of existing regulations.

In subsection 29.80(b)(3), the proposed regulation has been revised by replacing the word “and” with “or” to clarify that hoop nets deployed from persons on shore or manmade structures connected to the shore are not required to be marked with a surface buoy.

- 3) Amendments to the commercial fishing are proposed to sections 121, 121.5, 122,

and 705 as well as the addition of new sections 122.1 and 122.2. If adopted, the proposed amendments will:

- a. Implement a new trap limit program, effective October 2017, to specify 300 traps per lobster operator permit, establish lobster trap tags, new buoy marking requirements, and lost trap replacement (i.e., “catastrophic trap tag loss”) measures. The establishment of a trap limit program will optimize and create a more orderly commercial fishery as well as provide improved understanding of the amount gear used in the fishery.
- b. Allow permittees to possess up to two lobster operator permits. The possession of two lobster operator permits will allow a commercial fisherman to deploy a maximum of 600 traps in accordance with the proposed trap limit program.
- c. Allow permittees to retrieve up to six (6) **lobster** traps of another lobster operator permit holder that were **either** lost or damaged per fishing trip to help reduce potential impact of fishing gear on living marine resources and underwater habitat.
- d. Require Department approval of a waiver request for one lobster operator permit holder to service the trap of another. The proposed regulation will provide clear rules for requesting a waiver and improve regulatory enforcement.
- e. Require each fisherman who holds a lobster operator permit to submit an end of the season trap loss affidavit for each permit they hold at the end of each season to estimate gear loss in the fishery.
- f. Extend the maximum trap service requirement from four (4) to seven (7) days to provide fishermen more flexibility to service their gear and for safety purposes.
- g. Extend the pre- and post-season gear deployment periods from six (6) to nine (9) days for safety purposes.
- h. Extend the lobster operator permit holder death provision from one (1) to two (2) years to provide more time to transfer the lobster operator permit.
- i. Update permit renewal and transfer regulations for clarity and consistency with the proposed trap limit program.
- j. Update description of restricted fishing areas with latitude and longitude coordinates for clarification **purposes**.
- k. Provide clarification for identifying abandoned traps in state waters.
- l. Provide modifications to the existing fishing logbook format to improve data collection.
- m. Provide an option that would prohibit the sale of hole-punched or tail-clipped lobster in the markets for enforcement purposes.
- n. Establish fees for lobster operator permit and trap tags. Currently, lobster operator permit fees are located in FGC Section 8254(c), however, this code section will be rendered inoperative as part of the CA Lobster FMP implementing regulations as needed to implement the trap limit and trap tag program for the 2017-2018 lobster season.
- o. Clarify that all lobster operator permit holders fishing jointly on one vessel will be liable for any violation from that vessel.

- p. Clarify existing language on the use and possession of SCUBA gear in the commercial fishery.
- q. Make editorial changes to improve clarity of existing regulations.

In subsection 122.2(i), the proposed regulation has been revised with the addition of “during the spiny lobster fishing season” to clarify that beginning with the 2017-2018 lobster season, no lobster operator permit holder shall possess, use, control, or operate any lobster traps *during the spiny lobster fishing season* without a valid trap tag assigned to that lobster operator permit holder or receivers bearing a commercial fishing license identification number other than their own.

Other minor, non-substantive changes were made to Section 122.2 to add a line break between subsections 122.2(d) and 122.2(d)(1) and fix punctuation at the end of the noted Reference section and in subsection 122.2(i)(2)(B)4.

Benefits of the proposed action:

The benefits of the proposed regulatory action are sustainable management of the spiny lobster resource for both the commercial and recreational fisheries. The proposed regulations to implement the California Spiny Lobster FMP supports the MLMA (FGC Sections 7070-7088), which requires the State’s fisheries be managed by means of fishery management plans. The FMP serves as the foundation for managing the spiny lobster resource, including mechanisms to prevent, detect, and recover from overfishing, as required by the MLMA. The proposed changes to existing commercial and recreational regulations clarify the implementation of the spiny lobster regulations to support orderly fisheries.

Evaluation of incompatibility with existing regulations:

The proposed regulations were drafted to serve the sustainability and social policy objectives enumerated in FGC Sections 7050, 7055, and 7056. The amended sections would not conflict with existing Title 14 regulations, and any part of the FGC that conflict to the proposed regulations will be made inoperative as applied to the spiny lobster fishery (FGC Section 7071(b)). The Commission evaluated whether there were any other regulations on this area and has found that these are the only regulations concerning the California Spiny Lobster Fishery Management Plan. Therefore, the proposed regulations are not inconsistent or incompatible with existing state regulations.

On June 22, 2016, the Commission adopted each of the proposed regulations with the non-substantive edits described above for spiny lobster except the following:

- 1) Commercial buoy tag requirements under subsection 122.1(c).
- 2) Proposed subsection 29.90(f) and 121.5(e), marking of sport caught lobsters and commercial market prohibitions.

As such, the following changes were made in the final adopted regulatory text of subsection 122.1(c):

- 1. Remove all references to the proposed commercial buoy tag requirements, including paragraph (2) of subsection 122.1(c).**
- 2. Renumber originally proposed subsection 122.1(c)(3) as paragraph (2) under subsection 122.1(c).**

Proposed subsection 29.90(f) and 121.5(e), marking of sport caught lobsters and commercial market prohibitions, were removed entirely from the final adopted regulatory text.