



Regulations are proposed to implement a Fishery Management Plan (FMP) for California spiny lobster (*Panulirus interruptus*) pursuant to the Marine Life Management Act (MLMA) of 1999 (Fish and Game Code (FGC) sections 7070-7088 et seq.), which includes amending existing commercial and recreational lobster regulations to improve management of the spiny lobster fisheries and support orderly fisheries. The MLMA was passed to implement the State's policy of ensuring "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 provides guidelines for the development and adoption of FMPs, including a description of the contents of FMPs (FGC sections 7075-7088 et seq.). The MLMA contemplates the management of state fishery resources through FMPs implemented by California Fish and Game Commission (Commission) regulations (FGC Section 7078). The process of developing FMPs and the implementing regulations is expected to make management objectives and marine fishery regulations more readily available and clearer to the Commission, the California Department of Fish and Wildlife (Department), and the public. The California Spiny Lobster FMP (attachment 1) ~~is scheduled for adoption~~ was adopted by the Commission at its April 2016 meeting.

An extensive public scoping process was used by the Department to inform development of the California Spiny Lobster FMP and the proposed implementing regulations. In accordance with the MLMA (FGC Section 7076(a)), the Department sought interested individuals representing a broad range of stakeholder interests to provide advice and assistance in developing the FMP. The Lobster Advisory Committee (LAC) was formed in the spring of 2012, following a call for volunteers by the Department. The LAC provided guidance on FMP objectives as well as management recommendations addressing key issues identified during the LAC process. The LAC consisted of representatives from the marine science community, the recreational fishing sector, commercial fishing sector, the non-consumptive recreational sector, the environmental community, and the federal government. Nine LAC meetings occurred between June 2012 and September 2013 (see Section e: Public Discussions of Proposed Regulations Prior to Notice Publication). All meetings of the LAC were open to the public, and public input was encouraged. Meeting announcements were posted on the Department's California Spiny Lobster FMP website and the public was encouraged to sign up for the California Spiny Lobster FMP news email service. Meeting summaries, as well as various background documents, are also available on the Department's website at [www.wildlife.ca.gov/Conservation/Marine/Lobster-FMP/Involved](http://www.wildlife.ca.gov/Conservation/Marine/Lobster-FMP/Involved).

Once ~~adopted and~~ implemented through the proposed regulations, the California Spiny Lobster FMP will establish a management program for the spiny lobster recreational and commercial fisheries and detail the procedures by which the Department manages and Commission regulates the spiny lobster resource. The California Spiny Lobster FMP prescribes a harvest control rule (HCR) for the spiny lobster fisheries (attachment 1; see section 4.3). The HCR serves as the foundation for managing the fisheries in the future as well as the primary mechanism to prevent, detect, and recover from

overfishing as required by the MLMA. The HCR is a type of adaptive management framework that identifies potential conservation problems and prescribes appropriate management response measures. The harvest control rule consists of three parts: 1) reference points, 2) a control rule matrix, and 3) conservation and management measures listed in the control rule toolbox. Reference points are the metrics used to gauge the status of the fishery. The three lobster reference points are: 1) Catch, 2) catch per unit effort (CPUE), and 3) spawning potential ratio (SPR).

In addition to providing input on development of the California Spiny Lobster FMP, the LAC also formed consensus on several commercial and recreational regulatory amendments that serve to create a more orderly and safe fishery, improve management, clarify regulations, and improve enforceability of regulations. The LAC proposals were compiled into a finalized consensus recommendation on September 11, 2013. Representatives from the Department met separately with the LAC recreational and commercial representatives to clarify and define the details for describing regulation changes that would be enforceable and effective (attachment 1; see Appendix IX). The LAC proposals along with the Department's recommendations (attachment 1; see Appendix IX) were submitted to the Commission for consideration at its April 2015 meeting. At the Commission's June 2015 meeting, the Commission directed the Department to prepare this regulatory package using the Department's commercial and recreational recommendations as part of ~~this~~the FMP and implementing regulations.

At the direction of the Commission, three LAC consensus recommendations are not included in this regulatory proposal; 1) restricting the use of mechanized pullers in the recreational fishery, 2) a phase-in approach to the commercial trap limit, and 3) clarifying the provisions for the branding of commercial floats. A description and rationale for excluding these three recommendations from this regulatory package is provided in the "Consideration of Alternatives" Section C.

Upon adoption of the California Spiny Lobster FMP by the Commission, a corresponding set of implementing regulations must be adopted to enact the FMP. The California Spiny Lobster FMP implementing regulations will:

- 1) establish a new Article in Chapter 5.5, Subdivision 1, Division 1, Title 14, California Code of Regulations (CCR);
- 2) amend existing recreational lobster fishery regulations;
- 3) amend existing commercial lobster fishery regulations;
- 4) modify existing commercial lobster logbook to collect additional data needed to manage the fishery;
- 5) amend lobster operator permit requirements and fees; and
- 6) create new regulations that establish applications for transferring permits and affidavits for requesting replacement trap tags and reporting trap loss.

Additionally, 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 FMP and the proposed trap limit, the implementing regulations ~~of this FMP~~ will render the following sections of FGC inoperative once ~~they~~ the regulations are ~~adopted~~ effective:

- 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 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 proposed regulations are drafted to serve the sustainability and social policy objectives enumerated in FGC Sections 7050, 7055, and 7056.

### ***Current Regulations***

Regulations used to manage spiny lobster recreational and commercial fisheries are found in multiple sections of Title 14 of the 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. Fishery management plan regulations are found in Chapter 5.5, Article 1, Section 50 et seq. Section 121 regulates the possession of spiny lobster during the closed season and 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.

### **Proposed Regulatory Changes**

**By moving the rulemaking's effective date to April 1, 2017, references to the 2016-2017 regulations are no longer applicable; for that reason, the paragraph that follows has been deleted.**

~~Proposed regulations that are substantive regulatory changes (e.g., commercial trap limit and change to the sport season opening time) are proposed to be effective for the 2017-18 spiny lobster season, not the upcoming 2016-17 season, which starts in October 2016. Proposed changes to sections 29.80(b)(2), 29.90(a), 121.5(e), 122(b)(3), 122(c)(2)(A), 122(c)(5)(A), 122.1(c), 122.2(b)(2), 122.2(d)(2), 122.2(f), and 122.2(i) will become effective with the 2017-18 lobster season.~~

~~Reasons for this delay are related to the additional time that will be needed for the Department to acquire trap tags for the proposed trap tag program for the commercial fishery. In addition, the delay is recommended so that the new regulations can be noticed in the commercial fishing digest and sport fishing booklets, which are already published for the 2016-17 season. By not delaying the substantive changes identified above, the information in the 2016-17 commercial fishing digest and sport fishing booklet will be outdated and will cause public confusion. The regulatory changes that will be effective upon adoption for the 2016-17 season are not new regulations but are either minor changes, FGC sections that are made inoperative and moved into Title 14, or reorganizing of existing regulations.~~

## 1) Recreational Regulation Adjustments

### Amend Subsection 29.80(b)(2), Title 14, CCR; Hoop Net Servicing Requirements.

#### Proposed Changes

Current regulation states, "Any hoop net abandoned or left unchecked for more then 2 hours shall be considered abandoned and seized by any person authorized to enforce these regulations." This regulation change would correct wording from "then" to "than".

#### Necessity and Rationale

Non-substantive change to fix a grammatical error.

### Add new Subsection 29.80(b)(3), Title 14, CCR; Marking Hoop Net Floats with GO ID Number.

#### Proposed Changes

Subsection 29.80(b) provides provisions relating to the recreational use of hoop nets to take crustaceans. Current regulations do not require hoop net floats to be marked. ~~Beginning on April 1, 2017,~~ The proposed subsection would require each hoop net used south of Point Arguello to have a surface buoy legibly marked with the operator's GO ID number as stated on his or her recreational fishing license or lobster report card to provide enforcement personnel with the ability to confirm the identity of each hoop net operator. Hoop nets deployed from shore ~~and~~ or manmade structures connected to the shore are not required to be marked with a surface buoy.

### By moving the rulemaking's effective date to April 1, 2017, reference to "beginning on April 1, 2017" is unnecessary and has therefore been removed.

#### Necessity and Rationale

Currently, there is no requirement for marking hoop nets or attached floats to easily identify the individual using them; ~~improving accountability.~~ The proposed regulation will allow the Department's Law Enforcement Division (LED) to easily verify the operator of each hoop net in the field, improving accountability. This regulation would require each hoop net to have a surface buoy legibly marked with the operator's GO ID

number. These regulations will also identify the operator if the hoop net becomes abandoned or lost and is later recovered. The proposed regulation will help LED determine whether an operator is pulling his or her own hoop nets and to identify the operator of hoop nets that are used unlawfully in restricted fishing areas (e.g., Marine Protected Areas). A similar regulation is currently in place for recreational crab traps, where buoys are to be marked with the operator's GO ID number as listed on his or her sport fishing license (Section 29.80(c)(3)). The proposed regulation will only affect hoop nets used south of Point Arguello since the Department did not have the opportunity to scope the recreational fishery using hoop nets north of Point Arguello.

**Amend Subsection 29.80(g), Title 14, CCR; Clarifying Existing Language on the Possession of a Hooked Device While Taking Spiny Lobster.**

**Proposed Changes**

Subsection 29.80(g) provides provisions relating to the recreational take of crustaceans while diving and specifically states that while in pursuit of crustaceans divers may not possess any hooked device while diving or attempting to dive and that crustaceans can only be taken by hand. The proposed amendment will clarify that spearfishing gear may be possessed by divers while pursuing crustaceans so long as the gear is not used to aid in the take of lobsters; a crustacean.

**Necessity and Rationale**

Some divers carry spearfishing gear to opportunistically take fish while pursuing lobsters. This has led to different interpretations of what constitutes a “hooked device” and has resulted in citations for spear fishermen who were in possession of spearfishing gear while pursuing lobsters by hand. This proposed regulatory change will provide clarification for both recreational divers and LED. Proposed regulatory language will make it clear that possessing spearfishing gear is allowed while taking lobsters in compliance with all applicable regulations.

**Amend Subsection 29.90(a), Title 14, CCR; Recreational Season Opener.**

**Proposed Changes**

Currently, the regulation states that the recreational season opens at 12:01 a.m. (midnight) on the Saturday preceding the first Wednesday in October. ~~Beginning with the 2017-2018 spiny lobster season,~~ The proposed regulation would move the start of the recreational season six hours later from the current start time of 12:01 a.m. to 6:00 a.m.

**By moving the rulemaking's effective date to April 1, 2017, reference to “beginning with the 2017-2018 lobster season” is unnecessary and therefore has been removed.**

**Necessity and Rationale**

The current recreational season 12:01 a.m. start time has led to concerns over safety due to the numerous dive related accidents that routinely occur on opening nights. The

recreational lobster fishery is primarily a nighttime fishery for both divers and boat based anglers using hoop nets. The new 6:00 a.m. season start time will spread the initial recreational fishing effort across an entire day and night as opposed to bottlenecking the effort right at midnight. This should result in a safer, more orderly fishery opener for both boat-based fishermen and divers while also improving enforceability due to increased visibility during the early morning opener.

**Amend Subsection 29.90(c), Title 14, CCR; Measuring Spiny Lobster for Minimum Size Limit.**

**Proposed Changes**

Currently, this regulation allows for spiny lobster to be brought to the surface of the water to be measured, but it prohibits any sub-legal size lobsters from being brought aboard any vessel. The proposed regulation would allow for spiny lobster caught via hoop netting to be brought out of the water for measuring only. This would allow hoop net fishermen to bring lobster onto a boat, pier, or any platform from which they are fishing to measure lobster. Any sub-legal sized lobsters will still be required to be returned immediately to the water after measuring. Recreational lobster divers will still be required to measure all lobster while in the water.

**Necessity and Rationale**

The current requirement to measure spiny lobster before they are brought ~~aboard on board a the~~ vessel has been determined to be a safety issue for recreational hoop net fishermen who typically fish at night and have to lean over the side of a boat to measure spiny lobster at the surface of the water. In addition, it is not possible for someone fishing from a pier to measure lobster in the water. The proposed change will allow individuals to bring spiny lobster out of the water so they may be safely measured.

**Option to add new subsection 29.90(f) marking of spiny lobster linked to option 121.5(e) prohibiting the possession of marked spiny lobsters in markets. At its June 2016 meeting, the Commission chose not to pursue this option, so it has been removed.**

~~**Add new Subsection 29.90(f), Title 14, CCR; Requiring the Tail Clipping or Hole Punching of Spiny Lobsters Taken in the Recreational Fishery and Prohibiting the Release of Tail Clipped or Hole-Punched Spiny Lobster.**~~

~~**Proposed Changes**~~

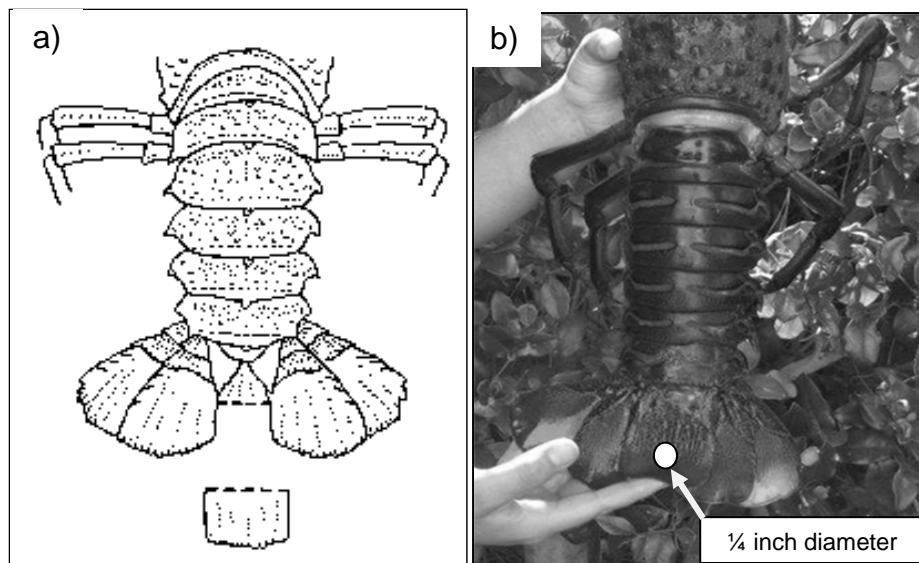
~~Currently, there is no regulation requiring the marking of spiny lobster to distinguish between those lobsters caught by the recreational and commercial fisheries. The proposed regulatory options would require recreational hoop netters and divers to:~~

~~Clip (Figure 1a) or hole punch (a minimum diameter of one fourth inch (1/4 inch), Figure 1b) the center tail fin of all retained spiny lobsters at or before the time catch information is required to be recorded on spiny lobster report cards (14 CCR Section 29.91(C)). The proposed regulation would also prohibit the release of tail clipped or hole punched~~

~~lobster back into the water, with the exception of LED staff releasing hole-punched lobster that have been retained unlawfully that may be encountered during enforcement activities.~~

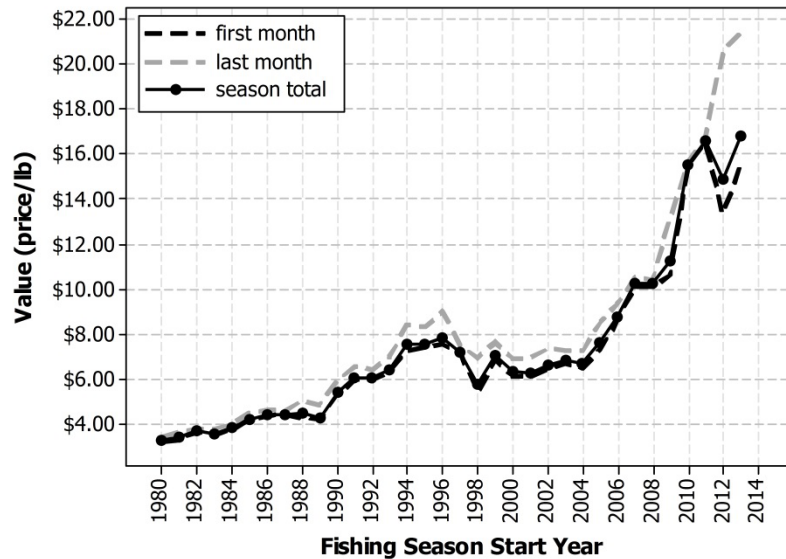
### ~~Necessity and Rationale~~

~~The recent rise in the ex-vessel value of spiny lobster (Figure 2) has provided increased incentive for the illegal commercialization of recreationally caught spiny lobsters. Some jurisdictions in other parts of the world require recreational fishermen to hole-punch the tail or remove the center tail fin of each lobster taken in the recreational fishery to distinguish recreationally caught lobsters from commercially caught lobsters. Requiring the clipping or hole-punching of the center tail flap is a simple tool to implement and enforce and can help prevent recreationally caught spiny lobsters from entering the black market. Proposed regulation also includes a prohibition on the release of recreationally caught spiny lobsters that are hole-punched or tail-clipped. This provision is to prevent hole-punched or tail-clip spiny lobsters from entering the commercial market. Some in the commercial sector have expressed a concern that recreational fishermen may intentionally release hole-punched or tail-clipped lobsters, which would make them unavailable for sale (as proposed in Section 121.5(c)) if caught by commercial fishermen.~~



~~Figure 1. Proposed regulations for recreationally caught spiny lobster. Retained lobster will be required to have their center tail fin removed (a) or a hole punched in their center tail fin (minimum 1/4 inch diameter) (b) by the time that they are reported on spiny lobster report cards.~~





~~Figure 2. Average ex-vessel price/lb. of spiny lobster during the first month of the fishing season, last month of the fishing season, and total fishing season from 1980-2013 fishing seasons.~~

## 2) California Spiny Lobster Fishery Management Plan

### Add Article 5.0 to Chapter 5.5, Title 14, CCR; California Spiny Lobster Fishery Management Plan

#### Proposed Regulation

This regulatory proposal will add Article 5.0 California Spiny Lobster Fishery Management Plan to Chapter 5.5, specifically sections 54.00, 54.01, 54.02, and 54.03 to Chapter 5.5 within Title 14 of the CCR. Regulations within Chapter 5.5 of Title 14 of the CCR primarily describe the overarching management strategy of the State's FMPs. FMPs generally describe the: 1) purpose and scope of each FMP, 2) relevant definitions used in each FMP, 3) process and timing of management, and 4) details regarding the management framework (e.g., harvest control rules, allocations). The new Article for the California Spiny Lobster FMP will contain four Sections: 54.00 Purpose and Scope, 54.01 Definitions, 54.02 Management Process and Timing, and 54.03 Harvest Control Rule.

**Add Section 54.00, et seq. This proposed series of regulations serves to implement the California Spiny Lobster FMP, as follows:**

**Section 54.00 - Purpose and Scope.** This section clarifies the purpose of this article consistent with the objectives and goals of the MLMA. It also states that this article together with other applicable state and federal laws and regulations will govern the spiny lobster fisheries. **The last two sentences of subsection (b) have been removed as they were duplicative, unnecessary and unclear.**

**Section 54.01 - Definitions.** This section provides definitions that are specific to this new article. All definitions in this section are based on and are consistent with the

definitions found in the California Spiny Lobster FMP. The definitions are also consistent with other provisions of state and federal laws. **Elements of the California Spiny Lobster FMP will be applied or enforced as a result of these new regulations, and therefore must be incorporated by reference.**

**Section 54.02 - Management Process and Timing.** This section states that the management of the spiny lobster fisheries would conform to the California Spiny Lobster FMP and applicable California law. The Department will monitor the condition of the fisheries and the spiny lobster population and provide reports and recommendations as needed.

**Section 54.03 - Harvest Control Rule.** This section serves to outline the proposed management actions presented in the California Spiny Lobster FMP. This section also provides other management and conservation measures that may be considered by the Commission for implementation at a later date, consistent with the goals and objectives of the California Spiny Lobster FMP. The California Spiny Lobster FMP prescribes a Harvest Control Rule (HCR) as the primary management tool for the spiny fisheries. The HCR contains: 1) a set of three threshold reference points, 2) a HCR matrix, and 3) a control rule toolbox of conservation and management measures. Descriptions of the three components of the HCR are provided below.

1. Threshold reference points are the trigger points for potential management actions. The three threshold reference points in the California Spiny Lobster FMP are based on the commercial lobster season catch (**i.e., multi-year running average of catch** in weight), CPUE, and SPR. Each threshold reference point is designed to gauge a particular aspect of the commercial fishery and set at a **reference** level that, if crossed, would be indicative of changes within the commercial fishery or spiny lobster resource that may require management action.
2. The HCR matrix is the tool prescribed by the California Spiny Lobster FMP to guide the interpretation of the status of the spiny lobster stock at any given time based on the status of the three threshold reference points (e.g., Catch, CPUE and SPR).
3. The eight conservation and management measures within the control rule toolbox of the California Spiny Lobster FMP were developed with input from the LAC and each have been utilized to manage lobster fisheries around the world. Several tools, such as a minimum size limit, are already used in California. The eight conservation and management measures are: change the commercial trap limit, change the recreational bag limit, implement a total allowable catch (TAC), fishing district closures, change season length, change minimum size limit, impose a maximum size limit, and implement a sex-selective fishery. These tools have been analyzed by Department staff and vetted with the public and constituents during the LAC process.

The HCR is designed to provide spiny lobster fisheries management with a proactive and coherent framework. The status of the spiny lobster fisheries would be assessed using predetermined metrics and interpretations, and management responses will be derived from the previously vetted conservation and management measures.

**New subsection 54.03(c) previously made reference to a toolbox in Section 50.03(a), which has been corrected to say subsection 54.03(a).**

### **3) Proposed Commercial Amendments**

#### **Amend Section 121 Title 14, CCR; Lobster, Spiny. Possession during Closed Season**

##### **Proposed Changes**

Current regulations in Section 121 provide provisions for the possession of spiny lobsters during the closed season. Current FGC Section 8251 sets the commercial fishing season for taking spiny lobster and provides provisions for baiting commercial traps in advance of the commencement of the commercial season. Section 121 will be amended by adding language currently found in FCG 8251 to new subsection 121(a), which defines the start and end of the commercial spiny lobster season as between the first Wednesday in October and the first Wednesday after March 15. Provisions of FGC 8251 on when commercial traps can be baited are added to new Section 122.2 and described in that section. Existing regulations in Section 121 relating to the possession of spiny lobster during the closed season will be lettered 121(b) and the title of Section 121 will be amended to read: Lobster, Spiny. Open Season and Possession during Closed Season.

##### **Necessity and Rationale**

FGC Section 7078 gives the Commission authority to adopt regulations to implement an FMP and to list FGC sections that are made inoperative as to the particular fishery covered by the FMP. One of the conservation and management options in the HCR in the California Spiny Lobster FMP is a change to the commercial fishing season. In order for the Commission to make future regulatory changes to the season length as contemplated by the California Spiny Lobster FMP, the commercial fishing season as described in FGC Section 8251 is moved into Title 14, Section 121. FGC Section 8251 will be made inoperative as listed in the California Spiny Lobster FMP and these proposed regulations adopted by the Commission according to the process described in FGC sections 7078 and 7088.

#### **Amend and add new Subsections to Section 121.5, Title 14, CCR; Lobster, Spiny. Minimum Size and Verification**

##### **Proposed Changes**

Current regulations in this section describe the conditions that spiny lobsters are to be maintained in so that the minimum size of spiny lobsters as described in FGC 8252 can be verified. Current FGC Section 8252 sets the commercial minimum size for spiny

lobsters at 3.25 inches in length, describes how the measurement is to be taken, requires the possession of a measuring device, and the immediate release of undersized lobsters. Section 121.5 will be renamed: "Lobster, Spiny. Minimum Size and Verification. Current subsections (a) and (b) will be re-lettered (c) and (d), respectively, with minor, non-substantive changes to clarify the existing regulations. This includes the addition of the term "fixed caliper" to the requirement of possessing a measuring device in subsection 121.5(b) to clarify the type of measuring device that must be possessed. New language is added from FGC Section 8252 to new subsection 121.5(a) that defines the minimum size and new subsection 121.5(b) that defines how spiny lobsters are to be measured and how a trap shall be serviced prior to any additional trap being brought aboard a vessel.

### **Necessity and Rationale**

Limiting a fisherman to having a maximum of one trap that has not been serviced aboard a vessel before pulling another trap helps ensure that any undersized lobster contained in the trap are measured and returned to the water in a timely manner.

### **Option to add Subsection 121.5(e) linked to option 29.90(f)**

At its June 2016 meeting, the Commission chose not to pursue this option, so it has been removed.

### **~~Necessity and Rationale~~**

~~Section 7078 of the FGC gives the Commission the authority to adopt regulations to implement an FMP and Section 7088 of the FGC provides that each FMP list any FGC sections that are made inoperative as to the particular fishery covered by the FMP. One of the management options in the California Spiny Lobster FMP Harvest Control Rule is a change to the minimum size of spiny lobsters that can be taken in the commercial fishery. Currently, the minimum size is set in the FGC. In order for the Commission to make future regulatory changes to the minimum size as contemplated by the FMP, the commercial minimum size limit as described in FGC Section 8252 is moved into Section 121.5, Title 14, CCR. Section 121.5(e) will be added to support the enforceability of the proposed regulation (Title 14, Section 29.90(f)) which will require the hole punching or tail clipping of recreationally caught lobster to address the issue of illegal commercialization of recreationally caught lobster. LED staff feels this regulation is necessary to enforce the marking provision proposed for the recreational fishery. Section 8252 of the FGC will be made inoperative, as listed in the California Spiny Lobster FMP, and the proposed new regulations Section 121.5 will be adopted by the Commission according to the process described in FGC Sections 7078 and 7088.~~

### **Amend and add new Subsections to Section 122, Title 14, CCR; Lobster, Spiny. Permits to Take.**

To improve the organization and clarity of commercial regulations pertaining to the commercial take of spiny lobster, the proposed changes groups the subsections contained in Section 122 by similar regulation subject (Table 1) as well as amend and

add new regulations to provide additional information and/or clarification. Some subsections in Sections 122 that regulate the marking of traps and buoys and pulling of traps will be amended and moved to new sections 122.1 and 122.2, respectively. To reflect the proposed reorganization, Section 122 is to be renamed “Spiny Lobster Permits and Restricted Areas.” Changes to Section 122 are described below.

Table 1. Summary of proposed relocation of existing subsections within Section 122.

CURRENT SUBSECTION NUMBER	REGULATION SUBJECT	PROPOSED SUBSECTION NUMBER
122(a)	Classes of Lobster Permits	No change
122(b)	Permit Renewal	No change
122(c)	Permit Transfers, Procedures, and Timeline	No change
122(d)	Permit Renewal	Move to 122(b)(2)
122(e)	Permit Renewal	Move to 122(b)(2)
122(f)	Permit Renewal	Move to 122(b)(4)
122(g)	General	Move to new 122(h)
122(h)	General	Proposed to be repealed*
122(i)	Pulling Lobster Traps	Move to 122.2(a)
122(j)	Lobster Buoys and Trap Tags	Move to 122.1(a)
122(k)	Lobster Buoys and Trap Tags	Move to 122.1(b)
122(l)	Pulling another permit holders traps	<del>Deleted</del> <b><u>Delete and replace with new</u></b> Moved to 122.2(h)**
122(m)	Pulling Lobster Traps	Move to 122.2(g)
122(n)	Pulling Lobster Traps	Move to 122.2(b)(4)
122(o)	Restricted Fishing Areas	New 122(d)
122(p)	General	New 122(e)
122(q)	General	New 122(f)
122(r)	Permit Transfers, Procedures, and Timeline	Move to 122(c)

\* Subsection 122(h) will be repealed from the regulations as certain sections of the FGC applicable to lobster will become inoperative with the adoption of the California Spiny Lobster Fishery Management Plan and the proposed regulatory package.

\*\* Section 122(l) The current requirement for servicing another fisherman’s trap is proposed to be ~~moved to 122.2(h) and~~ replaced ~~for the 2017/18 lobster season~~ by a new subsection 122.2(h) and a formal Department waiver process proposed under Section 122.2(h)(2) of this regulatory package.

**Amend Subsection 122(a), Title 14, CCR; Classes of Lobster Permit.**

### **Proposed Changes**

Currently, Section 122(a) describes take of spiny lobster as authorized under the three classes of spiny lobster permits in the commercial fishery: transferable lobster operator permit, non-transferable lobster operator permit, and lobster crewmember permit. The proposed amendments to paragraph (3) of Subsection 122(a) will clarify that any licensed commercial fisherman that does not possess a valid transferable or non-transferable lobster operator permit may purchase a lobster crewmember permit that will allow him or her to accompany and assist the lobster operator permit holder in the take of spiny lobster. In addition, minor modifications are proposed in paragraph (4) of Subsection 122(a) for clarity and consistency with terminology used in paragraph (1) of Subsection 122(a).

### **Necessity and Rationale**

The proposed amendments are minor, non-substantive changes that would provide clarity and consistency of the existing regulations.

### **Amend Subsection 122(b), Title 14, CCR; Permit Renewal.**

#### **Proposed Changes**

Currently, regulations pertaining to permit renewal are contained in various subsections under Section 122. To improve the logical organization of these regulations, amended Section 122(b) will be entitled "Permit Renewal." Current subsections 122(b) will be renumbered as paragraph (1) of subsection 122(b), and 122(d) and (e) are proposed to be consolidated into paragraph (2) of subsection 122(b). In addition, the proposed regulatory amendment will include a new provision (subsection 122(b)(3)) allowing the issuance of no more than two lobster operator permits to a licensed commercial fisherman; this new provision will bring this section into conformance with the new trap limit program (further detailed below in the new Section 122.1). Current requirements described in subsection 122(f) that outline the procedures and deadline for permit renewal will also be moved to Section 122(b) and renumbered as paragraph (4) under this subsection 122(b)(4).

**By moving the rulemaking's effective date to April 1, 2017, reference to "beginning with the 2017-2018 lobster season" is no longer applicable; subsection 122(b)(3) has therefore been amended.**

#### **Necessity and Rationale**

The proposed grouping and relocation of existing subsections by regulation subject are non-substantive changes to improve organization and clarity of the regulations. The addition of subsection 122(b)(3) is necessary to create consistency between existing and new regulations for the trap limit proposed as part of this regulatory package.

**The overlap with FGC in subsection 122(b)(4) is necessary to help clarify the process for an appeal; the "show cause" language is consistent with the appellant bearing the burden of persuasion as stated in case law. See**

**McDonough v. Goodcell, 13 Cal.2d 741; McDonough v. Garrison, 68 Cal.App.2d 318; Hansen v. State Board of Equalization, 43 Cal.App.2d 176; San Diego Cotton Club v. State Board of Equalization, 139 Cal.App. 655; Glick v. Scudder, 69 Cal.App.2d 717; and Martin v. Alcoholic Bev. Etc. Appeals Bd., 52 Cal.2d 259.**

**Amend Subsection 122(c), Title 14, CCR; Permit Transfer, Procedures, and Timeline.**

**Proposed Changes**

New subsection 122(c) is proposed, entitled “Permit Transfers, Procedures, and Timelines.” Proposed changes to this subsection are summarized below.

Current subsection 122(c), which requires notice of a permit transfer, will be renumbered as paragraph (1) under new subsection 122(c) with minor amendments to the regulatory text in which “Fish and Game Commission” is replaced with “commission.”

Current subsection 122(r)(1) will be amended and renumbered as paragraph (2) under subsection 122(c). Subsection 122(r)(1) currently allows for the transfer of a transferable lobster operator permit by a permit holder provided that an application in the form of a notarized letter is submitted to the Department and the nonrefundable transfer fee **specified in Section 705** is paid. Under the proposed amendment, a permit holder will be required to submit a notarized transfer application (DFW 1702) (New 2/2016) with the nonrefundable transfer fee to the Department in order to transfer his or her permit to another licensed commercial fisherman. **The permit holder would also be required to transfer all trap tags in his/her possession along with the permit.** The transfer will be effective upon approval of the application by the Department. In addition, the proposed amendment includes a new provision subsection (122(c)(2)(A)) that, ~~beginning with the 2017-2018 permit year,~~ if the lobster operator permit is transferred to a person with a valid transferable lobster operator permit and a non-transferable lobster operator permit, the non-transferable lobster operator permit becomes null and void and must be surrendered to the Department. This new requirement is consistent with the proposed provision of subsection 122(b)(3), in that a licensed commercial fisherman will not be issued more than two lobster operator permits.

Proposed new regulation (3) under subsection 122(c) is a new requirement that delays the transfer of a lobster operator permit when the permit holder is facing pending violations that could affect the status of the permit; this will prevent a permit from being transferred in an effort to avoid a suspension or revocation of a permit.

Current subsection 122(r)(2) will be amended and renumbered as new paragraph (4) under subsection 122(c). Currently, the estate of a transferable lobster operator permit holder may transfer that permit no later than one year from the death of the permit holder (subsection 122(r)(2)). The proposed amendment will extend the deadline for the estate to apply to transfer a transferable permit from one to two years.

Current subsection 122(r)(3) will be amended and renumbered as new paragraph (5) under subsection 122(c). Currently, a non-transferable permit becomes null and void upon the death of the individual to whom the permit was issued (subsection 122(r)(3)). The proposed amendment will add a requirement that requires the estate to immediately surrender the permit, including any Department issued trap tags to the Department after the death of the permit holder.

Proposed new regulation (6) under subsection 122(c) adds appeal provisions for permit transfers. Under existing regulations, no appeal provisions for denial of a transfer are specified. Under this new requirement, any applicant who is denied transfer of a transferable lobster permit may appeal the denial in writing to the Commission within 60 days of the date of the Department's decision.

**By moving the rulemaking's effective date to April 1, 2017, references to "beginning with the 2017-2018 lobster season" is no longer applicable; subsection 122(c)(2)(A), 122(c)(4) and 122(c)(5) have therefore been amended.**

### **Necessity and Rationale**

The proposed grouping and relocation of existing regulations by subject are non-substantive changes to improve organization and clarity. The amendments also include new permit transfer procedures and deadlines to improve the administration and management of permits within the commercial lobster fishery. The limited-entry nature of the commercial **lobster** fishery restricts the number of commercial participants. As such, the amendments will clarify the eligibility requirements and procedures in which the Department will authorize the transfer of a lobster operator permit to allow **new** permit holders to participate in the fishery.

Subsection ~~122(c)(3)~~**122(c)(2)** is amended to standardize requirements for transfer of Lobster Operator Permits. The proposed regulation requires a notarized transfer application to formalize the transfer process and collect accurate information from the permit holder and the proposed permit holder in the place of a notarized letter for each transfer. **This subsection also clarifies that if the Department approves a transfer application, the lobster operator permit holder requesting the transfer will transfer the Department issued trap tags to the new permit holder to complete the transfer.**

Subsection 122(c)(2)**(A)** is proposed for added clarity in cases where a fisherman may be in possession of multiple lobster operator permits of different classes. When a lobster operator permit holder holds two permits, the proposed regulation clarifies that if a fisherman holds a non-transferable and a transferable lobster operator permit, the transfer of a second transferable permit to that fisherman would render the non-transferable permit null and void. This would require the permit holder to surrender the nontransferable permit and tags to the Department. This proposal is consistent with other regulations proposed as part of this regulatory package, including subsection 122(b)(3) and Section 122.1 (trap limit program).



In addition, to clarifying transfer procedures, the proposed amendment includes a new process (subsection 122(c)(6)) as a means for applicants to appeal the denial of a permit transfer if applicants do not agree with a decision made by the Department. Regulations for other fisheries have appeal provisions if a transfer of a permit is denied by the Department.

In the case of a lobster operator permit holder's death (subsection 122(c)(4) transferable permits and subsection 122(c)(5) non-transferable permits), the amendments require the estate to temporarily relinquish or surrender, respectively, the permit and trap tags (beginning with the 2017-18 lobster season) to the Department and extends the deadline for the estate to apply for a transfer of a transferable lobster permit. This amendment is necessary because it is unlawful for the estate to fish the permit and therefore is required to surrender the permit to the Department; to protect the permit as an estate asset and to ensure an orderly and sustainable restricted access fishery (see FGC Section 7082(b)). The personal representative of the estate is charged with managing the estate assets with the care of a prudent person dealing with someone else's property; this means that the representative must be cautious and may not make any speculative investments (see Probate Code Section 8404 and Judicial Council Form DE-147). Allowing the permit to be fished by an unauthorized individual would be illegal and make the permit subject to subsequent suspension or revocation. The amendment prevents a permit from being fished until a transfer application has been submitted by the estate and approved by the Department. Under 122(c)(4) the Department would retain physical possession of the permit and work with the estate to ensure that fees are paid so that the permit remains valid until a transfer application is submitted, and it will allow The amendment also allows more time for the estate to transfer a transferable permit after the death of the permit holder. Should probate delay an estate from filing an application within two years, Section 122(c)(6) allows any applicant who is denied a transfer to appeal the denial to the Commission; in this regard, The the proposed regulations are consistent with current regulations for southern rock crab trap permits with, for which the estate is allowed two years from the date of the permit holder's death to transfer the permit to another commercial fisherman (Title 14 Section 125(e)(4)).

#### **Add New Subsection 122(d), Title 14, CCR; Restricted Fishing Areas.**

##### **Proposed Changes**

As discussed above, several regulations contained in Section 122 are relocated and grouped by related subject to improve clarity and enforceability. As such, subsection 122(o) describing closed areas around harbors is amended as new subsection 122(d) with amendments to the descriptions of the restricted fishing areas. Current regulations in subsection 122(o)(2)(A), subsection 122(o)(2)(B), and subsection 122(o)(2)(C) within Title 14 will be amended by replacing current descriptions of restricted commercial fishing area boundaries with latitude and longitude coordinates that can be easily referenced and plotted using GPS. Currently, restricted

fishing area boundaries for Newport Bay, Dana Point Harbor, and Oceanside Harbor are defined by landmarks, navigational markers, and compass headings. The proposed regulations will provide clarity and improved spatial resolution for these boundaries using latitude and longitude coordinates.

### **Necessity and Rationale**

This amendment is necessary to modernize the descriptions and provide for added clarity and enforcement. Many of the spatially referenced regulations currently found in Title 14 were created prior to GPS technology being readily available to the public. This resulted in general landmark locations and compass headings being the primary tool used to define spatially referenced regulations, which can sometimes result in regulations that are unclear and open to interpretation. For regulations that define restricted fishing areas (e.g., marine protected areas), it is important to have well defined and clear boundaries that can be easily interpreted and visualized. GPS technology provides this means and updating restricted fishing areas to latitude and longitude coordinates will greatly improve the understanding of these spatially referenced regulations. In addition, the current regulations do not accurately describe the restricted fishing area boundaries for Dana Point Harbor and Oceanside Harbor due to changes in the current locations of buoys and markers referenced in the regulations (Figure 3). For Dana Point Harbor, the eastern boundary of the restricted commercial fishing area will be extended to the current location of red buoy “4” as described in the current regulations. It is important to note that new charts list this buoy as red buoy “2”. For Oceanside Harbor, the southeastern boundary of the commercial fishing restricted area will be extended to adjust for an incorrect compass heading used to define the southeastern boundary line. This heading results in a boundary that does not extend completely to the southern jetty as described in the current regulation. This amendment will correct these minor boundary discrepancies and provide coordinates that can aid commercial fishing and navigational activities.

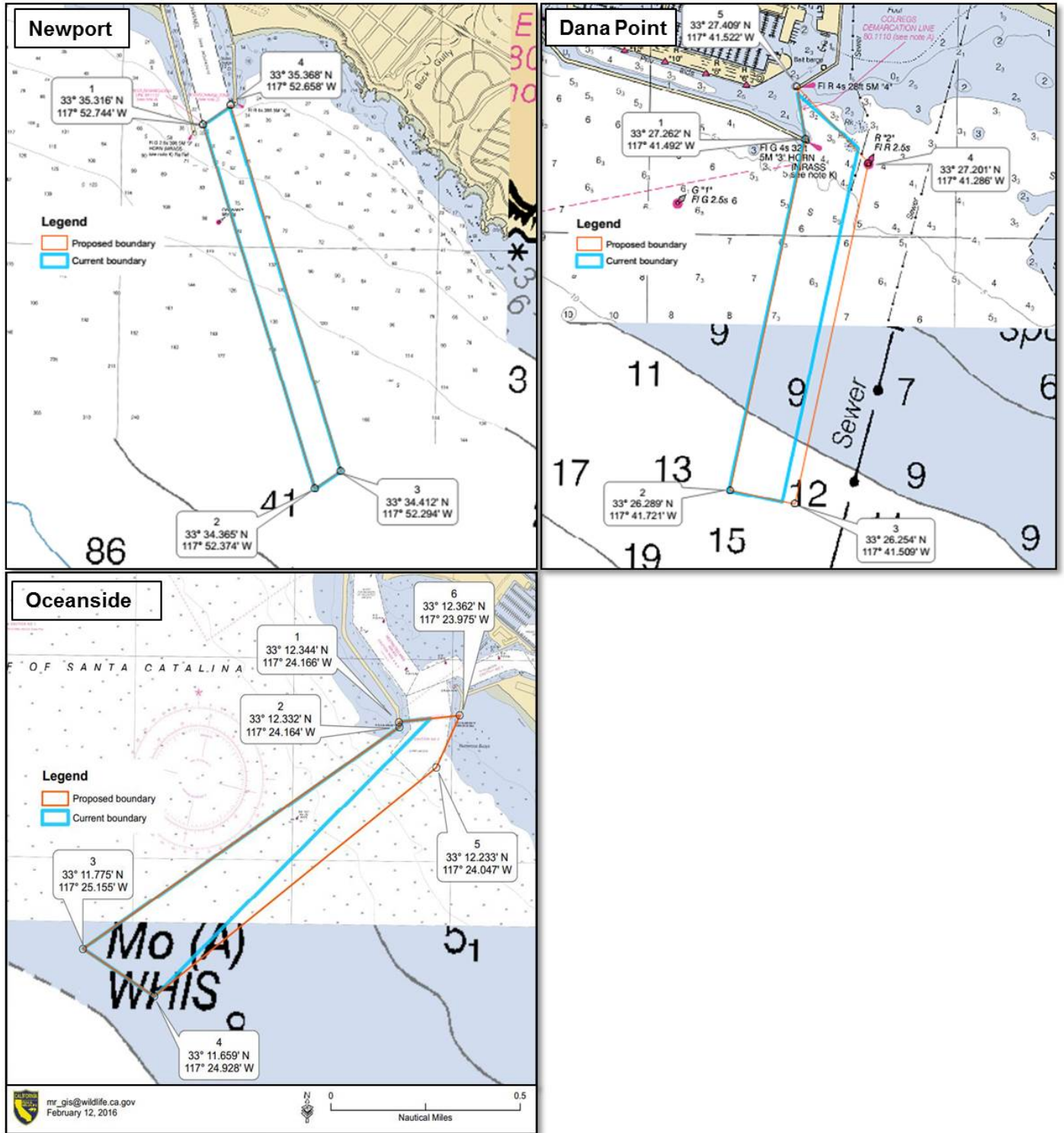


Figure 3. Proposed boundary modifications to restricted commercial fishing areas around Newport Bay, Dana Point, and Oceanside Harbor. The blue boundary lines represent the current boundaries defined by the regulations and the red boundary lines represent the proposed boundaries.

## **Amend Subsection 122(e), Title 14, CCR; Records.**

### **Proposed Changes**

Currently, any person who owns and/or operates any vessel used to take lobster must complete and submit an accurate record of all lobster fishing activities on a form (Daily Lobster Log, DFG 122) provided by the Department (Subsection 122(p)). As indicated in Table 1, current 122(p) is proposed to be re-lettered 122(e) as part of the restructuring of section 122. Additionally, an update to the format of the Daily Lobster Log (DFG 122 (7/96)), as referenced in the current regulation, is proposed to improve the collection of fishery-dependent data. The updated Daily Lobster Log (Rev. 03/04/16) is incorporated by reference into proposed subsection 122(e). Daily Lobster Log DFG 122 (7/96) differs from DFW 122 (Rev. 03/04/16) as follows:

1. Form contents have been updated to replace all instances of “Department of Fish and Game” with “Department of Fish and Wildlife” so that the form reflects the Department’s name change, effective January 1, 2013, pursuant to Assembly Bill 2402.
2. The “Daily Lobster Fishing Log” page has been retitled “Daily Lobster Log” and the “Notice to Individuals” section of this page has been changed to “Notice to Permittees” to be consistent with language used in the daily lobster log form and the regulations.
3. Form notices were updated to include the Regional Manager of the Marine Region as the official for maintaining the daily lobster log information and FGC Section 8022 disclosure statement.
4. The “Southern California Fisheries Chart” map elements has been updated to include scale bars, delineation of U.S. and Mexican waters, map borders with latitude and longitude marks, and acknowledgements and notes to improve the presentation of spatial information.
5. Form instructions were updated to include new Department mailing address to return completed forms, additional definitions and instructions for new fields to ensure the consistency of the information recorded, and to improve the clarity of existing instructions.
6. The updated log page will now have only two fishing activity sections per page due to changes in the page layout to accommodate new fields. The important instructions are updated to reflect the reduction in activity sections.
7. The updated log page will now require the reporting of geographic coordinates (“LATITUDE” and “LONGITUDE”) for “TRAP LOCATIONS,” which will replace “NEAREST LANDMARK.” New fields have been added to record the numerical value for latitude and longitude in degree and decimal minutes.
8. The updated log page will also provide two additional spaces (four spaces total) to record corresponding “LANDING RECEIPT NUMBER(S)” for each fishing activity section.

9. A new field named “# OF TRAPS CURRENTLY DEPLOYED” has been added to the log page under the “DATE TRAPS PULLED” section, which will require the reporting of number of traps currently deployed or fished.

Updated instructions that explain when and how logs are to be filled out, as well as when the logs are to be turned in to the Department, will accompany the form.

### **Necessity and Rationale**

Currently, the reporting of landmarks for trap locations on the existing Daily Lobster Log form is not useful for management as the name and size of area for a particular landmark can vary from fisherman to fisherman. The proposed requirement of recording the geographic coordinates for a string or group of traps would modernize the location reporting requirement, be more consistent, and improve the Department’s spatial understanding of fishing practices. Better spatial information on fishing practices will also be useful for informing gear recovery programs, identifying potential conflicts within the marine environment and for informing the issue of marine mammal gear interactions.

Increasing the number of spaces for fishermen to record landing receipt numbers would provide additional data to help the Department quantify the average weight of commercial lobsters landed. Average weight is a key input used to calculate the spawning potential ratio used to manage the fishery under the California Spiny Lobster FMP. Information on the number of lobsters caught and pounds landed come from two different sources. The number of legal size lobster retained by the commercial fishery is reported on the Daily Lobster Log and pounds landed reported on commercial landing receipts. Adding an additional space to record the landing receipt number associated with the catch on the Daily Lobster Log will improve correlation of these two data sources resulting in better estimates of the average weight of lobsters landed in the fishery.

The requirement to report of number of traps deployed will allow the estimation of number of traps fished at any one time during the season. This information is needed to estimate the number of traps used in the fishery and inform any future changes to the trap limit as contemplated in the California Spiny Lobster FMP. Overall, the proposed changes to update the format of the Daily Lobster Log will help improve Department fishery-dependent data collection, correlation of fishing logs and landing receipts, and overall assessment of the commercial fishery.

### **Amend Subsection 122(f), Title 14, CCR; Logs Submittal Requirements for an Annual Permit.**

#### **Proposed Changes**

Current subsection 122(q), which requires a fisherman to submit his/her lobster logs in order to be eligible for a successive year annual permit is now under subsection 122(f).

#### **Necessity and Rationale**

This is a minor, non-substantive change in the numbering of subsections.

## **Add new Subsection 122(g), Title 14, CCR; Allowing More Than One Operator Permit Holder to Operate from the Same Vessel and Liability.**

### **Proposed Changes**

Current regulations do not explicitly prohibit more than one fisherman with a lobster operator permit from operating out of the same vessel at the same time. This regulation is being amended to clarify the provisions surrounding this activity. It states that if multiple lobster operator permit holders operate from the same vessel during the same trip, they may share joint liability for any potential violation arising out of their fishing activities.

In addition, the proposed regulation clarifies that each permittee whose traps are being pulled must be aboard the vessel.

### **Necessity and Rationale**

**Current regulations allow multiple lobster permittees to concurrently fish on the same vessel to maximize efficiency, and practical space limitations may require them to store their catch in a single hold. The fishermen each keep track of what they take, and the lobsters are then distributed prior to landing. Upon landing, the catch of each permittee is recorded on a landing receipt that identifies them and their permit, along with other relevant information (see FGC, Section 8043). Lobsters are a fungible commodity; there are no individual quotas in the fishery and how the catch is apportioned is not a fishery management concern. A permit allows the take and possession of lobster for commercial purposes. Fishermen may only take under the authority of their individual permits and, upon landing, must report their catch. The fishery is not subject to any restrictions on co-mingling aboard the vessel and in the absence of such restrictions, the fishermen may combine their catch prior to landing (see FGC, Section 8140).**

**However, effective fishery management also requires that persons be held accountable for the illegal take and possession of lobsters. Both lobster permit operators and lobster permit crewmembers exercise dominion and control over the lobsters taken and so may be held accountable for any illegal lobsters taken. Until distribution occurs, all permittees have constructive possession of the total catch and so remain jointly liable for any violations occurring during the take and possession of the total catch. Without the imposition of constructive possession it would be too easy to skirt the law by simply disclaiming ownership of any illegally taken lobster. "Constructive possession is deemed to exist when persons maintain control or a right to control contraband. Possession may be imputed when the contraband is found in a location which is immediately and exclusively accessible to the accused and subject to his dominion and control." (People v. Showers (1968) 68 Cal.2d 639). Here, this presumption of constructive possession is supported by the fact that the permittees are engaged in a highly regulated activity and are charged with knowledge of all the laws relating thereto,**

**and that they are engaged in the same activity at the same time within the confines of a vessel.**

Current regulations do not define who is liable for fishing violations in situations where multiple lobster operator permit holders are fishing jointly on one vessel. This proposed addition would provide clarification for fishermen who operate from the same vessel and help them understand their responsibilities. The proposed regulation will minimize confusion regarding liabilities for fishing violations and improve enforcement surrounding this activity.

**Repeal Subsection 122(h), Title 14, CCR**

**Proposed Changes**

Currently, subsection 122(h) describes the responsibilities and conditions of each lobster operator permit holder their agents, servants, employees, or those acting under their direction or control to adhere to all of the provisions of the FGC and regulations of the Fish and Game Commission. This section is proposed for deletion from Section 122.

**Necessity and Rationale**

This regulation is redundant with FGC Section 12000 and unnecessary within Title 14 because as written it reiterates that all laws must be followed by permit holders and is a condition of the permits. FGC Section 12000 details that any violation of the Fish and Game Code or regulation adopted under the code, is a misdemeanor.

**Add new Subsection 122(h), Title 14, CCR; Permission to Carry SCUBA Gear on Commercial Vessels.**

**Proposed Changes**

Currently, no SCUBA equipment or other breathing device may be used to assist in the take of spiny lobster from a commercial lobster vessel (subsection 122(g)). Commercial harvest of spiny lobster is permitted only with the use of traps (subsection 122(a)(2)). The proposed new subsection 122(h) would replace current subsection 122(g) regulation and clarify that SCUBA equipment may be used for the purpose of locating and securing traps for retrieval. This new provision also specifies that lobsters contained in traps that had been secured using SCUBA may be possessed only after those traps have been serviced aboard the fishing vessel within the trap service interval requirement.

**Necessity and Rationale**

The proposed regulation is added to provide clarification on the use of SCUBA in the commercial fishery. This provision would allow SCUBA equipment to be kept onboard a commercial fishing vessel for the purpose of locating and securing traps only, and not to be used in the take of lobsters. This regulation will help to reduce gear loss by allowing fisherman to retrieve traps that would potentially be lost. In addition, this regulation will assist permit holders to retrieve the individual trap tags that are secured to these traps. Since the new trap tag program will limit the number of traps each fisherman can fish,

each trap tag will represent a unit of effort that cannot be replaced and there will be a greater incentive to recover trap tags.

### **Add new Section 122.1, Title 14, CCR; Lobster Buoys and Trap Tags.**

#### **Proposed Regulation**

This new section will contain existing regulations on lobster buoys and a proposed new spiny lobster trap limit program. As discussed above, several existing regulations in Section 122 are proposed to be organized into new sections by similar subjects to improve clarity and enforceability. As such, current Section 122 regulations that explain buoy use (Section 122(j)) and describe proper identification markings on a buoy (Section 122(k)) will be moved to this section as subsection 122.1(a) and subsection 122.2(b), respectively. Minor additional modifications were made to the existing regulatory text of these proposed new subsections for clarity and consistency. **The word “operator” was inadvertently omitted from the last sentence of 122.1(b) and has been added.**

**~~In addition, subsection 122.2(c)~~ Subsection 122.1(c) is added to this section to detail the proposed spiny lobster trap limit program, ~~effective beginning with the 2017-2018 commercial spiny lobster season.~~ The first two sentences of the originally proposed subsection 122.1(c) are combined to eliminate unnecessary verbiage and to clarify that a lobster trap must have attached a Department issued trap tag when possessed ~~is while~~ on board a vessel or deployed, rather than on a dock or in a storage location. In addition, by moving the rulemaking’s effective date to April 1, 2017, reference to “beginning with the 2017-2018 lobster season” is no longer applicable and has been removed. Subsection 122.1(c)(2), which required buoy tags, was not adopted by the Commission; it has been struck from the regulatory language and the following subsections renumbered accordingly. What were previously subsections 122.1(c)(3)(C) and 122.1(c)(3)(D), which are now subsections 122.1(c)(2)(C) and 122.1(c)(2)(D), have been amended to add clarity by addressing syntax issues. Proposed subsection 122.1(c)(2) relating to lobster buoy tags was not adopted by the Commission and has been removed from the regulatory language.**

Currently, there is no regulation in place that limits the number of traps each commercial lobster fisherman may fish. The proposed regulations would create a trap limit program for the commercial spiny lobster fishery. Under this new program, a commercial fisherman that holds a valid lobster operator permit may fish up to 300 traps for each valid lobster operator permit in his or her possession. A commercial fisherman may hold up to two lobster operator permits allowing them to fish a maximum of 600 traps (300 for each permit). To implement this new trap limit program, each lobster trap deployed must be marked with a single Department issued trap tag and each trap buoy must be marked with a buoy tag that is supplied by the fisherman. The buoy tag must be legibly marked with the lobster operator permit number and the number that is listed on the trap tag that the buoy is marking.



Before the beginning of each fishing season, each lobster operator permittee will be issued 300 individually numbered trap tags for each valid lobster operator permit they possess. They Lobster operator permit holders will not receive any additional trap tags for that season unless they submit a signed “catastrophic loss” affidavit to the Department (proposed affidavit added to Section 705 of these regulations); this would allow for the in season replacement of trap tags lost due to a “catastrophic loss,” which is defined as the cumulative loss by a lobster operator permit holder of 75 or more trap tags for each valid lobster operator permit due to such circumstances beyond the permit holder’s control, such as weather, force majeure and acts of God. The affidavit will require the lobster operator permittee to provide details regarding the circumstances leading to the catastrophic loss event, dates the loss occurred, and the identification numbers of the lost trap tags. All affidavits need to be reviewed and approved by the Department before any replacement tags are issued. A nonrefundable fee will be charged for each replacement tag. Any trap tag reported as lost are null and void and if subsequently recovered during the season must be returned to the Department.

**Necessity and Rationale**

Establishing a trap limit for the commercial spiny lobster fishery is one of the most important components of the California Spiny Lobster FMP implementing regulations. The trap limit provisions proposed by the LAC solution with input from the Department address an ongoing problem identified by fishery participants. As demonstrated above in Figure 2, the ex-vessel price per pound of spiny lobster has risen significantly in the past years while, at the same time, the number of total trap pulls that the fleet experienced each fishing season has also increased (Figure 4). Feedback from commercial fishermen suggests that the total number of traps that each fisherman uses is increasing as well. This escalation of trap usage is likely brought on by competition for fishing grounds and the externalization that continue to incentivize individuals to increase their respective trap numbers.

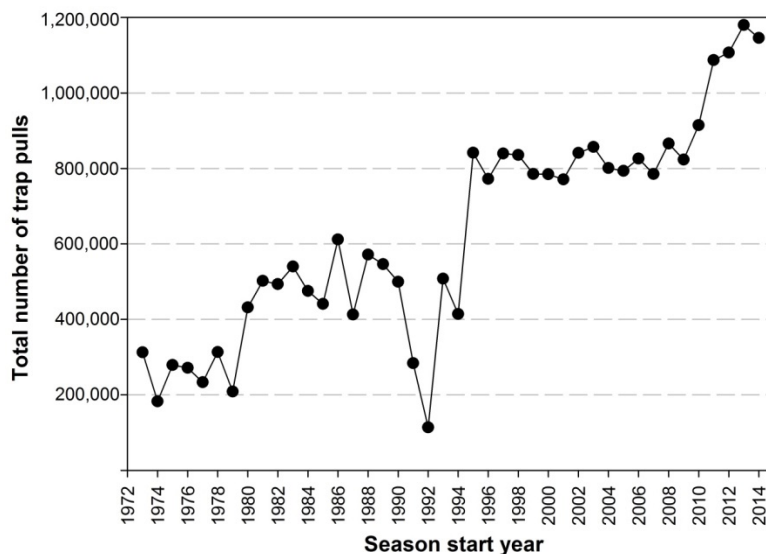


Figure 4. Total trap pulls recorded by the commercial spiny lobster fishery from 1973-2014 commercial fishing seasons.

The upward trend in the number of trap pulls in the fishery is unlikely to impact the biological sustainability of the spiny lobster stock itself due to other regulations currently in place. For example, all traps deployed by commercial fishermen are required to be outfitted with escape ports that allow small sub-legal sized individuals to escape and clips that are designed to dissolve overtime (destruction device). However, the reported rise in number of traps used in the fishery may impact other components of the ecosystem as well as increase the possibility of gear loss. More lost gear can, in turn, negatively impact the marine environment as well as the experience of those who enter that environment for recreational and other commercial purposes.

The escalating number of gear can also reduce the profitability of the commercial spiny lobster fishery. MLMA fishery management objectives include observing the long-term interest of people dependent on fishing for food, livelihood, or recreation” (FGC Section 7056(i)), and allowing fishery participants to propose methods to prevent or reduce excess effort in marine fisheries” (FGC Section 7056(e)). In 2013, the Department conducted the “California Department of Fish and Wildlife Commercial Lobster Survey” which targeted all holders of transferrable and non-transferrable lobster operator permits. The survey found that a majority of the respondents were in support of a trap limit. Of the 111 holders who responded, over 76 percent responded “yes” to the question, “Do you think there needs to be a trap limit?” Of the respondents who supported the trap limit, 48 percent wanted a trap limit of 300 or less and 34 percent wanted a trap limit of 350-400 traps. Of these respondents, 52 percent also expressed support for the ability to hold two permits to fish a maximum 600 traps while 67 percent did not support more than two permits.

Based on the responses to the 2013 survey, the LAC was asked to consider the development and implementation of a trap limit for the commercial sector. As a group, the LAC reached consensus on recommendations to establish a 300-trap limit for each lobster operator permit and implement the use of trap tags modelled generally after the Dungeness crab trap tag program. Under this new program, each commercial lobster fishermen will be required to properly affix a Department-issued trap tag to the lobster trap along with an identifying buoy tag, supplied by the lobster operator permit holder, affixed to the lobster trap buoy to verify the number of traps fished and aid enforcement. Trap tags also provide a method to identify and return lost traps to owners during the fishing season. Following the consensus recommendations from the LAC, the Department proposes regulatory amendments that will allow a licensed fisherman to possess a maximum of two lobster operator permits, and for each lobster operator permit held, the Department will issue 300 trap tags before the start of the fishing season. The possession of two lobster operator permits will allow a commercial fisherman to deploy a maximum of 600 traps. The 300-trap limit attached to each lobster operator permit applies to both transferrable and non-transferrable lobster operator permits. The establishment of a trap limit program and trap tag provisions will optimize and create a more orderly commercial fishery as well as provide improved understanding of the amount gear used in the fishery.

In addition, a catastrophic loss provision is proposed as part of the trap limit program, which will allow lobster operator permit holders to replace lost trap tags over a season. A catastrophic loss is defined as a loss of 75 or more traps with tags (25 percent or more loss) per permit, based on the LAC consensus recommendations. The catastrophic loss tags would be uniquely identifiable for enforcement purposes. This provision takes into consideration unusual or unforeseen circumstances that may be encountered during a season and help ensure that these circumstances do not pose an unfair hardship for fishermen to operate within their allotted number of traps.

**Under the proposed regulations, lobster operator permit holders will be required to submit a signed Lobster Operator Permit Catastrophic Lost Trap Affidavit to the Department (proposed DFW 1701 added to Section 705) and pay the applicable fees to receive replacement trap tags. Commercial fishing is a highly regulated activity involving the take of public trust resources. Effective administration, management, and enforcement of marine fisheries require accurate information about the resources and those who participate in their take. Penal Code 115 makes it a crime to knowingly file a forged document with a government office in the state. Fish and Game Code Section 1054 makes it unlawful to submit any false, inaccurate, or otherwise misleading information on any application presented to the Department for the purpose of obtaining a license or permit, and allows the Department to require such applicants to show proof of the statements or facts required for obtaining such license or permit. Requiring that the signature of the applicant be made under penalty of perjury helps minimize the potential for fraud.**

**Add new Section 122.2, et seq. Title 14, CCR; Pulling Lobster Traps.**

This new section 122.2 will specify (and therefore clarify) the pulling of traps for the take of spiny lobster. As discussed above, organizational changes affecting several Section 122 regulations are proposed to consolidate similar regulations in the same section and improve clarity and enforceability. Accordingly, the proposed changes would move current regulations that specify the time of day during which lobster traps shall not be pulled, raised, or placed in the water (subsection 122(i)), and provisions for which traps may be placed in the water before the opening of the spiny lobster season (subsection 122(n)), and disturbed or moved by Department employees (subsection 122(m)), ~~and servicing another fisherman's traps (subsection 122(l))~~ to this new section as subsection 122.2(a), subsection 122.2(b)(1), ~~and~~ subsection 122.2(g) ~~and subsection 122.2(h)~~, respectively. **Subsection 122(l) regarding servicing another fisherman's traps has been deleted and is replaced by a new 122.2(h).**

In addition, the proposed regulatory package would make existing FGC Section 8251 inoperative and language of that FGC section specifying that lobster traps may be set and baited 24 hours in advance of the spiny lobster season opening date is moved to this section as subsection 122.2(c). The current trap servicing requirement found in FGC Section 9004 that requires traps to be serviced every 96 hours (4 days) will be made inoperative and added to new subsection 122.2 (d)(1). ~~Subsection 122(d)(1)~~

~~will only be in effect for the 2016-2017 season and is proposed to be replaced by subsection 122.2(d)(2), while~~ extending the trap service requirement from 4 to 7 days. By moving the rulemaking's effective date to April 1, 2017, the 2016-2017 regulations are no longer applicable and have been removed.

Minor additional modifications were made to the existing regulatory text of the proposed new subsections for clarity and consistency. For example, proposed subsection 122.2(g) will replace the wording of “shall” to “may” when referring to Department staff inspecting commercial fishing traps while on official duty. New regulatory proposals in this section are discussed further in the subsection summary below.

### Add new Subsection 122.2(b)(2), Title 14, CCR; Grace Period for Deploying and Retrieving Traps during the Closed Season.

#### **Proposed Regulation**

The proposed regulation would provide a three-day extension to the current grace period for which fishermen have to deploy traps before the start of the commercial season and to retrieve traps after the commercial season ends. Under current regulations, legally marked lobster traps may be placed in the water not more than six days before the opening of the season and may remain in the water for not more than six days after the close of the season, provided that the traps are unbaited with doors wired open (subsection 122(n)). ~~Beginning with the 2017-2018 spiny lobster season, the~~ The proposed new subsection would allow fishermen to deploy their traps into the water nine days before the start of the season and nine days after the end of the season to retrieve traps and transport them back to shore. With the exception for the allowance of baiting traps 24 hours in advance of the start of the commercial season, any trap that is deployed before the season starts or is left in the water after the end of the season will still be required to be left unbaited and wired open.

By moving the rulemaking's effective date to April 1, 2017, the 2016-2017 regulations are no longer applicable; subsection 122.2(b)(1) is therefore deleted, and what was previously 122.2(b)(2) has become 122.2(b).

#### **Necessity and Rationale**

The extended grace period will provide additional time for fishermen to transport their traps to their desired fishing locations. It was discussed during the LAC process that the current six-day allowance posed a safety issue, since fisherman are currently overloading their boats with traps during the pre-season deployment period. Another benefit to the fishery is that this extended time would allow fishermen extra time to transport their own traps to fishing location, since currently some fishermen pay others to transport their traps. Similarly, the grace period after a season's close only requires fishermen to clean out the bait jars from their deployed traps, and the physical traps can be retrieved and transported safely over a course of nine days. The proposed regulation would give fishermen three extra days to further buffer these margins of safety. The new regulation will retain the requirement of keeping the traps unbaited and

wired open during the grace periods. This requirement will continue to minimize the risk of unwanted bycatch and ghost fishing

### **Add new Subsections 122.2(d)(1) and 122.2(d)(2), Title 14, CCR; Trap Service Requirement.**

#### **Proposed Regulation**

Currently ~~regulation in~~ FGC Section 9004 requires that fishermen raise, clean, service, and empty their lobster traps at time intervals not to exceed 96 hours (four days) and also provides fishermen with an exemption if weather conditions do not allow the fishermen to service their traps. The proposed regulations would make current FGC Section 9004 inoperative as it relates to lobster and ~~add the current service requirement of 96 hours to subsection 122.2(d)(1) to be effective for the 2016-2017 lobster season only. Beginning with the 2017-2018 lobster season,~~ subsection 122.2(d)(2) will ~~replace subsection 122.2(d)(1) and~~ extend the maximum allowable trap servicing requirement to 168 hours (7 days). No weather exemptions are provided in the proposed subsection 122.2(d)(2), which is consistent with federal regulations governing servicing of fixed gear (50 CFR Section 660.230(b)(3)).

**By moving the rulemaking's effective date to April 1, 2017, the 2016-2017 regulations are no longer applicable; previously proposed subsection 122.2(d)(1) has been deleted and what was previously 122.2(d)(2) has become 122.2(d).**

#### **Necessity and Rationale**

The proposed regulation would extend the allowable trap servicing requirement to seven days. The proposed longer servicing requirement originated from the LAC process to provide fishermen with more discretion to selectively service their traps based on prevailing weather conditions and economic incentives. In addition, the current four-day service requirement does not supply some fishermen with enough time to service all of their traps. The seven-day servicing requirement is also in line with the federal regulation controlling the maximum servicing requirement for fixed gears in federal water (50 CFR Section 660.230(b)(3)), which does not provide specific or general weather exemptions. **The requirement for fishermen to clean, service and empty their traps is described below.**

#### **Cleaned**

**When lobster traps are pulled from the seafloor, they are often covered with seaweed or other debris; this material could potentially defeat important destruction devices/panels and escape ports. Cleaning the trap of accumulated material helps for these measures to function properly every time it is pulled within the required time frame.**

#### **Serviced**

**Lobster traps also have a lot of mechanisms (construction) that allow them to work properly. A trap that has been damaged or corroded could potentially cause escape measures to not work properly, or there could be damage to the line, etc.**

that could lead to the trap breaking off and becoming lost. The requirement to service the trap ensures that the trap is returned to the water in a condition where the escape measures and security of the trap are ensured each time it is pulled within the required time frame, consistent with Fish and Game Code sections 9003 and 9010.

#### Emptied

The requirement to empty a lobster trap is to ensure that all lobsters and other animals are removed from the trap (to avoid leaving undersized or female lobsters in the trap to attract other lobsters and to minimize bycatch mortality).

#### Add New Subsection 122.2(e), Title 14, CCR; Abandoned Traps.

##### **Proposed Regulation**

The proposed regulation specifies that it is unlawful to abandon lobster traps in the waters of the state. A trap will be considered abandoned if it is not retrieved 14 days after the close of the commercial spiny lobster season. ~~The regulation further specifies that from 15 days after the close of the 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. Previously the last sentence of this subsection identified the time period after the end of a season when a lobster operator permit holder or a Department designee could pull and transport an unlimited number of abandoned traps of another lobster operator permit holder. This language more appropriately belongs under the exceptions provided in subsection 122.2(i) that is now proposed to become subsection 122.2(h).~~

##### **Necessity and Rationale**

Current regulations do not define when a trap is considered abandoned. The proposed regulation will provide clarification for identifying abandoned traps in state waters. ~~The regulation would also serve to help reduce the potential impact of abandoned fishing gear on living marine resources and underwater habitat and may help inform future lost gear recovery programs.~~

#### Add New Subsection 122.2(f), Title 14, CCR; Trap Loss Affidavit.

##### **Proposed Regulation**

~~Beginning with the 2017-2018 spiny lobster season, the~~ The proposed subsection would require each fisherman who holds a lobster operator permit to submit to the Department by April 15 an end of the season trap loss affidavit (DFW 1020, New 2/18/2016) for each permit he/she holds at the end of each season. The provision provides that if a permit is transferred during the season, only the fisherman who is in possession of that lobster operator permit at the end of the season is required to submit the form, and that all trap tags shall be retained by each lobster operator permit holder until the beginning of the next lobster season.

**By moving the rulemaking's effective date to April 1, 2017, reference to "beginning with the 2017-2018 lobster season" is no longer applicable.**

### **Necessity and Rationale**

The proposed regulation is part of the proposed trap tag program for the commercial spiny lobster fishery, ~~effective beginning with the 2017-2018 spiny lobster season.~~ The proposed regulation will provide needed essential fisheries information (FGC Section ~~9493~~) to estimate trap loss in the fishery to inform future management decisions and help fishermen account for the number of Department trap tags issued and lost during a season. The proposed change will also aid lost gear recovery programs by providing information on gear loss.

**Add New Subsection 122.2(g), Title 14, CCR; Department Inspection of Traps for Compliance.**

### **Proposed Regulation**

**Under current regulations (subsection 122(m)), the Department has authority to inspect lobster traps for compliance. Current subsection 122(m) is now proposed as subsection 122.2(g), with a modification to the original regulatory text from Department employees "...shall inspect any lobster trap..." to "...may inspect any lobster trap."**

### **Necessity and Rationale**

**In the authority given to the Department to inspect lobster traps for compliance, the word "shall" was changed to "may" in an effort to give the Department discretion in determining if a lobster trap should be inspected for compliance. If the word "shall" was not changed to "may", the Department would not have discretion and would have to pull every lobster trap encountered on the water; this is not reasonable and would curtail general patrol efforts, leaving patrol vessels unable to conduct effective and efficient patrols.**

**Add New Subsection 122.2(h), Title 14, CCR; Allowing the Retrieval of Lost, Damaged, or Abandoned Traps.**

### **Proposed Regulation**

**By moving the rulemaking's effective date to April 1, 2017, the 2016-2017 regulations are no longer applicable and previously proposed subsection 122.2(h) has been removed.**

**Add New Subsection ~~122.2(i)(1)~~122.2(h)(1), Title 14, CCR; Allowing the Retrieval of Lost, Damaged, or Abandoned Traps.**

### **Proposed Regulation**

Under current regulations, fishermen are prohibited from possessing and retrieving lobster traps other than their own unless they have written permission from the **lobster operator** permit holder. This regulatory proposal would allow a lobster operator permit

holder to retrieve lost, damaged, ~~or abandoned,~~ **or otherwise derelict** lobster traps of another lobster permit holder without written permission or a waiver (**new subsection 122.2(h)(1)**). The regulatory language is mirrored after existing language for the Dungeness crab fishery. Fishermen are limited to retrieving up to six **derelict lobster** traps per trip during **the** spiny lobster season unless a wavier is granted by the Department (as described in new subsection ~~122.2(i)(2)~~**122.2(h)(2)** below). The time, location, number of traps retrieved, and the trap tag information must be recorded in the retrieving vessel's log. Any lobster caught in the retrieved traps cannot be retained and must be returned to the ocean immediately.

**By moving the rulemaking's effective date to April 1, 2017, reference to “beginning with the 2017-2018 lobster season” is no longer applicable and has been removed.**

### **Necessity and Rationale**

The proposed provisions accommodate instances when it is necessary to retrieve lost, **damaged, abandoned, or otherwise derelict** traps during the season to help reduce potential impact of fishing gear on living marine resources and underwater habitat. The proposed regulations will also help the Department collect data on trap loss to support fisheries conservation and management.

**As a result of clean up to the language in new subsection 122.2(h)(2), additional proposed revisions to this subsection maintain a parallel structure between the two subsections.**

**Add New Subsection ~~122.2(i)(2)~~122.2(h)(2), Title 14, CCR; Waiver Allowing One Commercial Fisherman to Service the Trap of Another.**

### **Proposed Regulation**

Under the current regulation, a fisherman with a valid lobster operator permit may pull and service the traps of a non-present fisherman, provided that the fisherman pulling the trap (i.e., retriever) possesses written permission from the trap owner explicitly allowing the retriever to pull the trap. This written permission or “note” process provides fishermen with a mechanism to satisfy the existing trap servicing limit, comply with season length limit, or prevent gear loss in the event of unforeseen circumstances (e.g., illness or engine breakdown).

The proposed regulation will formalize the **current** “note” process under this subsection by requiring fishermen to submit a waiver request to the Department. The fisherman applying for a waiver must describe the circumstances behind why having another lobster operator permit holder servicing his/her trap is necessary to prevent undue hardship. **The waiver is not intended to lend or transfer the rights or privileges of a lobster operator permit to another fisherman, but to merely provide a mechanism to prevent undue complications in complying with the fishing regulations for circumstances beyond the control of the permit holder, such as vessel incapacitation. The Department may also disallow retrievers to retain any**



**legal size lobster captured during the process of servicing or retrieving traps based on the circumstances of the waiver request.**

**Under proposed subsection 122.2(h)(2)(F), legal-size lobster caught in the retrieved traps may be retained by the fisherman retrieving the trap, unless otherwise specified as a condition of the waiver.** The Department may **also** attach **other** specific conditions to the waiver as is appropriate given the specific circumstances **(proposed subsection 122.2(h)(2)(C))**. For instance, once a retriever services a trap, he or she may potentially be required to transport the trap back to shore or redeploy the trap unbaited and wired open. ~~The Department may also disallow retrievers to retain any legal-size lobster captured during the process of servicing or retrieving traps.~~ In either case, liability for any violation related to improperly redeployed traps will transfer to the fisherman that has the permission to pull the traps.

### **Necessity and Rationale**

This provision is necessary to provide fishermen flexibility to respond to unforeseen circumstances to prevent undue hardship and comply with fishing regulations. The proposed regulation will provide clear rules **and procedures** for requesting a waiver to minimize public confusion and improve regulatory enforcement.

### **Add New Subsection 122.2(h)(3), Title 14, CCR; Allowing the Retrieval of Abandoned Traps after the Lobster Season Ends**

#### **Proposed Regulation**

**Under current regulations, fishermen are prohibited from possessing and retrieving lobster traps other than their own unless they have written permission from the permit holder. Under proposed subsection 122.2(e) of this regulatory proposal, spiny lobster traps not retrieved 14 days after the close of the commercial lobster season will be considered abandoned. This regulation specifies that from 15 days after the close of the 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.**

#### **Necessity and Rationale**

**This regulation accommodates instances when it is necessary to retrieve abandoned traps after the close of the spiny lobster season to help reduce the potential impact of fishing gear on living marine resources and underwater habitat. The proposed regulations may also help inform future abandoned and lost gear recovery programs.**

### **Amend Section 705, Title 14, CCR; Commercial Fishing Applications, Permits, Tags and Fees**

#### **Proposed Changes**

**By moving the rulemaking's effective date to April 1, 2017, references to the 2016-2017 regulations are no longer applicable; reference to the 2016-2017 regulations and “beginning with the 2017-2018 lobster season” have been removed.**

This regulatory proposal will add multiple subsections to Section 705 of Title 14 related to commercial lobster operator permits and the new trap tag program. ~~Current lobster operator permit fees will be added to subsection 705(a)(T) and will only be in effect for the 2016-2017 season.~~ Fees related to “Lobster Operator Permit and Trap Tags” will be added to subsection 705(a)(8)(U)(T) ~~to become effective for the 2017-2018 season.~~ Currently, the fee for a lobster operator permit is established in FGC Section 8254(c). Section 8254(c) will become inoperative as part of the California Spiny Lobster FMP implementing regulations and permit fees moved into Title 14. Moving the lobster operator permit fee to Section 705 is necessary to incorporate the cost of 300 annual trap tags to the annual permit fee as part of the proposed trap limit ~~for the 2017-2018 lobster season.~~ A fee will also be established for each replacement tag requested when a permit holder suffers a catastrophic loss of at least 75 tags during a season.

The proposed regulations explicitly describe the trap limit and issuance procedures for permit holders to acquire trap tags, the costs of which are added to the existing lobster operator permit fee, and replacement tags from the Department. The proposed fees for the lobster operator permits and replacement trap tags due to catastrophic loss were set based on a fiscal analyses completed by the Department to recover costs incurred by the Department pursuant to FGC Section 1050 (attachment 2). The proposed regulations require that all lobster traps are properly tagged during the season to ensure that lobster operator permit holders are operating within the proposed trap limit of 300 traps.

Other changes include a new Lobster Operator Permit Transfer Application (DFW 1702), **Lobster Operator Permit Catastrophic Lost Trap Tag Affidavit (DFW 1701), and End of Season Spiny Lobster Trap Loss Reporting Affidavit (DFW 1020).** **Each of the three forms will need to be reviewed and approved by the Department and require a signature “under penalty of perjury” that the information submitted is accurate; DFW 1702 must also be notarized.**

**Commercial fishing is a highly regulated activity involving the take of public trust resources. Effective administration, management, and enforcement of marine fisheries require accurate information about the resources and those who participate in their take. Penal Code Section 115 makes it a crime to knowingly file a forged document with a government office in the state. Fish and Game Code Section 1054 makes it unlawful to submit any false, inaccurate, or otherwise misleading information on any application or other document presented to the department for the purpose of obtaining a license, permit, tag or other entitlements and allows the Department to require such applicants to show proof of the statements or facts required for obtaining such license or permit. California Code of Civil Procedure Section 2015.5 provides that such statements**

or facts may be supported by an unsworn declaration in writing of such an applicant which recites that it is certified or declared to be true under penalty of perjury. By requiring such certification on its forms, the Department notifies the applicants of his/her legal duty while establishing his/her knowledge of such duty. Requiring that the signature of the applicant be notarized on DFW 1702 helps minimize the potential for fraud. (New 2/2016) for transferring a lobster operator permit is proposed for subsection 705(b)(1). The application replaces the notarized letter currently submitted by the permit holder who wants to transfer a lobster operator permit. Permit transfers are allowed under proposed subsection 122(c)(2). A Lobster Operator Permit Catastrophic Lost Trap Tag Affidavit (DFW1701) (New 2/2016) is proposed for subsection 705(c)(4) and its associated trap tag replacement fees are proposed for subsection 705(c)(5). Regulations for submitting catastrophic trap tag loss claims are described in proposed new subsection 122.2(c)(3). An End of Season Spiny Lobster Trap Loss Reporting Affidavit (DFW(1020) (New 02/18/16) is proposed for subsection 705(c)(6) as described in proposed subsection 122.2(f). Lobster operator permit holders are required to submit a report identifying the number of traps lost during the just concluded lobster season.

#### *Lobster Operator Permit Transfer Application (DFW 1702) (New 2/2016)*

This form is proposed under subsection 122(c)(2) and would be added to subsection 705(b)(1).

#### Necessity and Rationale

Under existing regulations, permit holders submit a notarized letter when a permit is being transferred to another licensed commercial fisherman. The application replaces the notarized letter currently required in regulation. The application ensures that the permit holder or the estate accurately provides the information required in regulation for the Department to review and process the transfer. The application is also required to be notarized. It is easier and more efficient for the permit holder and the Department when an application is used so that the permit holder or estate does not have to draft a letter to the Department when transferring a permit.

#### *Lobster Operator Permit Catastrophic Lost Trap Tag Affidavit (DFW 1701) (New 2/2016)*

This form is proposed for subsection 705(c)(5) and its associated trap tag replacement fees are proposed for subsection 705(c)(6). Regulations for submitting catastrophic trap tag loss claims are described in proposed new subsection 122.1(c)(2). To request replacement trap tags, the lobster operator permit holder must complete DFW 1701, which includes:

- A description of the events that resulted in the destruction or loss of trap tags and any other information that will help the Department assess the circumstances of the loss.

- Documentation of any reports filed reporting the loss or destruction of trap tags.
- Date the trap tags were first known to be lost or destroyed.
- Last known location (latitude and longitude coordinates) of traps/tags.
- Date the traps were last serviced (if trap tags were lost due to trap loss).
- A description of weather events or other suspected caused of trap tag loss.
- Number of trap tags that were lost.

#### Necessity and Rationale

DFW 1701 is needed to provide the Department with a mechanism to document and assess claims of catastrophic trap tag loss as stipulated in proposed subsection 122.1(c)(2). The Department will only issue replacement tags for the number of trap tags reported as lost on the affidavit. All trap tags identified on the affidavit as lost by the lobster operator permit holder will become null and void, and remain so even if they are recovered at a later date, to ensure enforceability of the proposed 300 trap limit for each lobster operator permit.

#### *End of Season Spiny Lobster Trap Loss Reporting Affidavit (DFW 1020) (New 02/18/16)*

This form is proposed for subsection 705(c)(7) as described in proposed subsection 122.2(f). The proposed amendment would require that each lobster operator permit holder complete and submit DFW 1020 at the end of the fishing season (by April 15) for each lobster operator permit that he or she possesses to identify the number of traps lost during the just concluded lobster season. The affidavit must also describe the circumstances surrounding the loss of traps and, if possible, the approximate date and last known location of those traps. Fishermen are also required to indicate the trap tag numbers for each reported lost trap, including those lost traps marked with replacement tags acquired through a catastrophic loss claim.

#### Necessity and Rationale

The requirement for commercial fishermen to report end of season trap loss information (proposed DFW 1020) is necessary to estimate the number of traps lost during a season, verify the loss of Department issued tags and provide the Department with needed essential fisheries information (Fish and Game Code Section 93) to help inform future management decisions. The additional spatial information on trap loss will also be useful for informing gear recovery programs, identifying potential conflicts within the marine environment, and the issue of marine mammal gear interactions.

The Legislature finds and declares that the critical need to conserve, utilize, and manage the State's marine fish resources and to meet the policies and other

requirements stated in this part require that the State's fisheries be managed by means of fishery management plans.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Regulation: Authority: Sections 200, 202, 205, 215, 219, 220, 713, 1050, 2365, 7071, 7072, 7075, 7078, 7082, 8254, and 8259, Fish and Game Code.

Reference: Sections 200, 202, 205, 207, 215, 220, 1050, 2365, 7050, 7055, 7056, 7071, 7075, 7078, 7852.2, 8043, 8046, 8250, 8250.5, 8254, 9002, 9002.5, 9005, 9006, and 9010 Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change: None

(d) Identification of Reports or Documents Supporting Regulation Change:

Attachment 1: CDFW 2016. California Spiny Lobster Fishery Management Plan (Jan, 2016). California Department of Fish and Wildlife, Sacramento, California. <https://www.wildlife.ca.gov/Conservation/Marine/Lobster-FMP>

Attachment 2: Estimated CDFW cost and fees for procurement and administering lobster trap tags per permit license year and fee for replacement trap tags.

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

Lobster Advisory Committee

The California Department of Fish and Wildlife (Department) conducted an extensive public scoping process to inform the development of the California Spiny Lobster FMP and the proposed implementation regulations. The Lobster Advisory Committee (LAC) was formed in the spring of 2012, following a call for volunteers to various public stakeholder groups by the Department. The purpose of the LAC is to involve constituent representatives with the development of the California Spiny Lobster FMP. The LAC provided guidance on California Spiny Lobster FMP objectives as well as management recommendations that addressed key issues put forth by members of the public. The LAC consisted of representatives from the marine science community, the recreational fishing sector, commercial fishing sector, the non-consumptive recreational sector, the environmental community, and the federal government. Nine LAC meetings occurred between June 2012 and September 2013; all meetings were open to the public, and public input was encouraged. The LAC meeting summaries as well as various background documents are available on the Department website at <https://www.wildlife.ca.gov/Conservation/Marine/Lobster-FMP/Committee>.

LAC public meetings 2012-2013

1. June 20, 2012, Department Office, Los Alamitos, CA

2. August 1, 2012, Department Office, Los Alamitos, CA
3. September 5, 2012, Department Office, Los Alamitos, CA
4. December 5, 2012, Department Office, Los Alamitos, CA
5. April 10, 2013, Department Office, Los Alamitos, CA
6. June 12, 2013, Department Office, Los Alamitos, CA
7. July 10, 2013, Department Office, Los Alamitos, CA
8. August 15, 2013, Department Office, Los Alamitos, CA
9. September 11, 2013, Department Office, Los Alamitos, CA

#### Fish and Game Commission meetings

The Department provided updates on the California Spiny Lobster FMP process and details of the management framework (harvest control rules) at Commission meetings and at Fish and Game Commission Marine Resources Committee (MRC) meetings from 2014- 2015. All meetings were open to the public and provided opportunities for public comments. The Department and LAC regulatory recommendations were previously transmitted to the MRC at its March 2015 meeting and to the Commission for consideration at its April and June 2015 meetings. At the June 2015 meeting, the Commission directed the Department to prepare this regulatory package. The California Spiny Lobster FMP was delivered to the Commission for its consideration at its December 2015 meeting, the discussion hearing was held at the February 2016 meeting and adoption ~~is scheduled for~~ was at the Commission's April 2016 meeting.

The California Spiny Lobster FMP and proposed recreational and commercial regulations were discussed at the following MRC and Commission meetings (2013-2016)

1. December 11, 2013 Commission meeting
2. March 24, 2014 MRC meeting
3. August 5, 2014: MRC meeting.
4. November 5, 2014 MRC meeting
5. March 4, 2015 MRC meeting
6. April 8, 2015 Commission meeting
7. June 10, 2015 Commission meeting
8. December 9, 2015 Commission meeting
9. February 10, 2016 Commission meeting

#### IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change: No alternatives were identified.
- (b) No Change Alternative:

Do not adopt the California Spiny Lobster 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 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 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 was proposed to reduce the illegal tampering of commercial traps by recreational anglers 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 anglers using mechanized pullers due to the very few anglers 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 2015-16 season. The trap limit will not be effective until the 2017-18 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 (subsection 122(k), Title 14, CCR; **proposed to become new subsection 122.1(b), Title 14, CCR**). 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

**VI.** Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

**VII.** 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 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.

**VIII.** Economic Impact Assessment:

**Commercial Spiny Lobster Fishery Economic Impact**

The commercial California spiny lobster fishery ranks as the fourth highest in ex-vessel value, ranging from \$15 to \$18 million in the last three seasons (after Dungeness crab, market squid, and Chinook salmon). This rank is achieved, despite having amongst the lowest harvest volume, by having generally the highest value per pound of all California fisheries. Market prices for spiny lobster have been increasing at a faster than average rate as well, in part driven by a boost in export demand. The spike in prices has been accompanied by increases in commercial trap effort over recent years.

The commercial spiny lobster fishery is a restricted access fishery with about 150 permits actively fished since 2008. In 2005, over two-thirds of the commercial lobster

permits became transferable. The high cost of market-traded permits (\$50,000-\$100,000) may also be a factor encouraging more trap pulls so as to recoup the cost of the permit.

The **California Spiny Lobster FMP Fishery Management Plan (FMP)** reports the 2009-10 to 2011-12 season average total economic output of the fishery statewide as \$22,523,000, which supports about 323 full-time equivalent (FTE) jobs. The annual harvest volume and market price have risen since. The 2012-13 to 2014-15 season estimates for the average total statewide economic output is now \$34,477,000, supporting about 495 FTE jobs. This is largely driven by the increase in ex-vessel value from \$11,188,354 (in \$2012) to \$17,141,722 (the average for the last three seasons in \$2015).

### Commercial Lobster Fishery Average Economic Impacts (\$2015)

California South Coast: Santa Barbara, Ventura, Los Angeles, Orange, and San Diego Counties				
Mean 2012-13, 2013-14, & 2014-15	Ex-Vessel Value	Indirect Effects	Induced Effects	Total Effects
Output	\$ 17,141,722	\$ 7,764,017	\$ 9,571,423	\$ 34,477,180
Employee Compensation	\$ 1,066,181	\$ 2,167,982	\$ 2,675,566	\$ 5,909,729
Proprietor's Income	\$ 5,870,817	\$ 329,378	\$ 454,496	\$ 6,654,708
Labor Income Effect	\$ 6,937,015	\$ 2,497,360	\$ 3,130,061	\$ 12,564,437
Other Property Type Income	\$ 304,283	\$ 1,078,266	\$ 2,003,233	\$ 3,385,764
Indirect Business Taxes	\$ 1,149,472	\$ 520,491	\$ 565,557	\$ 2,235,538
Total Value Added	\$ 8,390,770	\$ 4,096,117	\$ 5,698,851	\$ 18,185,739
Jobs - Full Time Equivalent (FTE)	369.9	54.2	70.8	494.9

The largest landings occur within the first two weeks of the 23-24 week season. Eighty percent of the season's total catch is landed by the fifteenth week of the season. The economic impact of the catch by each south coast county for the last season, 2014-15 is shown below. The commercial lobster fishery adds about \$6.9 million dollars in total value added (also called net economic output) to Santa Barbara County, \$2.2 million to Ventura County, \$3.4 million dollars to Los Angeles County, \$2.1 million dollars to Orange County, and \$5.1 million dollars to San Diego County.

### Commercial Lobster Fishery Economic Impacts by County for 2014-15 Season

County	Total Lobster-Associated		Employee Compensation (2015)	Total Value Added (2015)	Total Economic Output (2015)
	Ex-Vessel Value (2015\$)	Employment (2015)			
Santa Barbara*	\$ 6,527,889	188.5	\$ 2,250,535	\$ 6,925,470	\$ 13,129,557
Ventura	\$ 2,126,246	61.4	\$ 733,038	\$ 2,255,745	\$ 4,276,523
Los Angeles	\$ 3,172,293	91.6	\$ 1,093,670	\$ 3,365,501	\$ 6,380,439
Orange	\$ 2,014,218	58.1	\$ 694,416	\$ 2,136,894	\$ 4,051,200
San Diego	\$ 4,846,048	139.9	\$ 1,670,709	\$ 5,141,197	\$ 9,746,866
California State Total	\$ 18,686,694	539.5	\$ 6,442,368	\$ 19,824,807	\$ 37,584,585

\* Santa Barbara County includes Channel Islands spiny lobster catch.

### Recreational Spiny Lobster Fishery Economic Impact

The recreational spiny lobster fishery is not limited access and report card sales suggest that participation has fluctuated but overall remained stable over recent years. Newer hoop-net techniques deployed from boats have added another method beyond traditional diving for lobsters. Increased recreational activity brings more fisher spending into the coastal economies from San Luis Obispo County down to San Diego County, as the recreational fishery extends further north than the commercial fishery, into San Luis Obispo County. Annual expenditures in the recreational spiny lobster fishery were estimated to be \$37 million dollars for the 2011-12 season. Expenditures on spiny lobster fishing gear, personal boats, auto/vessel fuel, food, accommodations, dive/party boat fees, and other fishing-related expenditures circulate through the economy often doubling the initial direct spending in summing the total economic impact throughout the state. Recreational ocean fishing stimulates employment in a wide variety of sectors that support fishing-specific and traveler in general activities.

The proposed regulations are designed to balance the objectives of the long-term sustainability of the spiny lobster fishery while not burdening or limiting access for the spiny lobster commercial and recreational fisheries.

a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The Commission anticipates no negative impacts on the creation or elimination of jobs within the state because the proposed action is not likely to reduce harvest quantities. These actions are intended to promote orderly commercial and recreational fisheries while ensuring the long-term sustainability of the fisheries and resource.

b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The Commission anticipates no negative impacts on the creation of new businesses or the elimination of existing businesses within the state because the proposed action is not likely to reduce harvest quantities. These actions are intended to promote orderly commercial and recreational fisheries while ensuring the long-term sustainability of the fisheries and resource.

c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The Commission anticipates no negative impacts on the expansion of businesses currently doing businesses within the state because the proposed action is not likely to reduce harvest quantities. These actions are intended to promote orderly commercial and recreational fisheries while ensuring the long-term sustainability of the fisheries and resource.

d) Benefits of the Regulation to the Health and Welfare of California Residents:

The Commission anticipates generalized benefits to the health and welfare of California residents through the sustainable management of the spiny lobster resource.

The proposed regulations are intended to implement the California Spiny Lobster FMP and add clarity to existing regulations to improve management of the fisheries. Implementation of the FMP is anticipated to benefit persons engaged in the spiny lobster fisheries by supporting the long-term viability of spiny lobster fisheries and associated business activities.

e) Benefits of the Regulation to Worker Safety:

The Commission anticipates that this regulatory action will not have any impact on worker safety.

f) Benefits of the Regulation to the State's Environment:

The Commission anticipates benefits to the State's Environment. It is the policy of this 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 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 California Spiny Lobster 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.

g) Other Benefits of the Regulation:

The intent of the proposed action is the long-term sustainability of the spiny lobster resource and viability of the commercial and recreational fisheries in accordance to the objectives of the MLMA. The proposed regulatory action will ensure the long-term economic, recreational, cultural, and social benefits of the fisheries by maintaining a healthy and sustainable spiny lobster resource.

## Updated Informative Digest/Policy Statement Overview

Under current regulations, 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 (FMP) 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.

Upon adoption by the Commission, the California Spiny Lobster FMP will establish a management program for the spiny lobster recreational and commercial fisheries and detail 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 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), ~~and~~ (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.
  
- 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, and 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 6 lobster traps of another lobster operator permit holder that were lost, ~~or~~ damaged, abandoned, or otherwise derelict lobster traps 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 4 to 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 6 to 9 days for safety purposes.
- h. Extend the lobster operator permit holder death provision from 1 to 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 California Spiny Lobster FMP implementing regulations as need to implement the trap limit and trap tag program ~~for the 2017-2018 lobster season.~~
- o. Clarify that all lobster operator permit holder 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.

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)).

**UPDATE:**

**The amended Initial Statement of Reasons adds statements of necessity to Section III (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary; other clarifying statements; and, minor editorial changes. These statements are directly related to the revised proposed regulatory text in the California Spiny Lobster Fishery Management Plan implementing regulations. The California Spiny Lobster Fishery Management Plan, adopted by the Commission on April 13, 2016, is incorporated by reference in the amended regulatory language.**

**The additions to the Initial Statement of Reasons are indicated in bold, double underlined text in this Amended Initial Statement of Reasons; deletions are indicated by ~~bold double strikeout text~~. Minor edits and additions or deletions for improved clarity, spelling, punctuation, etc., that do not affect content, are not shown.**