

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 29.80 and Section 122,
Title 14, California Code of Regulations
Re: Crab and Lobster Recreational Gear Marking and
Commercial Lobster Harbor Restricted Fishing Areas

- I. Date of Initial Statement of Reasons: March 13, 2017
- II. Date of Pre-adoption Statement of Reasons: May 18, 2017
- III. Date of Final Statement of Reasons: June 28, 2017
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: February 9, 2017
Location: Rohnert Park, CA
 - (b) Discussion Hearing Date: April 27, 2017
Location: Van Nuys, CA
 - (c) Adoption Hearing: Date: June 22, 2017
Location: Smith River, CA
- V. Update:

At the April 27, 2017 California Fish and Game Commission (Commission) meeting, a representative from the Port of Hueneme (Port) indicated that the Port currently holds a neutral position in regard to proposed subsection 122(d)(2)(D), which would establish a new restricted fishing area (RFA) for Port Hueneme under the commercial lobster fishing regulations. The Port's Board of Harbor Commissioners had not sanctioned the petition request to add Port Hueneme as a RFA in the commercial lobster fishing regulations; therefore, the Port request that the Commission not to rely upon the January 2016 petition letter from the Port as a document for supporting the regulation change. The Port, however, supports its Harbor Safety Committee to serve as the lead for the proposal moving forward since this topic had been vetted at the committee level.

In addition to testimony from Port representatives, the Commission took public testimony on the proposed Port Hueneme RFA from lobster fishermen at the

April 2017 Commission meeting. In response to concerns raised by commercial lobster fishermen during the discussion hearing, the Commission instructed the Port's Harbor Safety Committee to continue discussions with commercial lobster fishermen to determine if a compromise could be reached on the proposed Port Hueneme RFA.

Since that time, the Oxnard Harbor District, which owns and operates the Port, hired an independent third party to facilitate discussions between the Port and affected stakeholders to develop a new proposal. Based on those discussions, a proposal with new RFA boundary lines was presented at a special meeting of Harbor Safety Committee on June 6, 2017. The Harbor Safety Committee voted on the revised boundary lines and submitted a letter to the Commission requesting the current proposed regulations be modified using the revised boundary lines provided in the Attachment A. A significant number of public comments received by the Commission were opposed to the proposal.

On June 22, 2017, the Commission adopted the staff recommendation for actions on the proposed amendments to sections 29.80 and 122. All of the proposed regulatory changes to the crab and lobster recreational gear marking and commercial harbor restricted fishing areas were adopted, with the exception of the proposed Port Hueneme RFA for which the No Change Alternative was selected. The Commission further directed staff to continue working on a compromise solution for Port Hueneme.

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

All written and verbal comments received by the Commission on the proposed regulatory changes are summarized and responded to in this Final Statement of Reasons for Regulatory Action in Table 1. The public comment period closed with the adoption of the proposed regulatory action at the June 22, 2017 Commission meeting.

VII. Location and Index of Rulemaking File:

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

VIII. Location of Department Files:

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

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

No alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

(b) No Change Alternative:

Without regulatory change, crab and lobster recreational gear marking requirements will continue to place avoidable burdens on Commercial Passenger Fishing Vessels (CPFVs), guided operations, and the recreational sector in general.

The original ISOR text in this section regarding the Port Hueneme RFA has been removed. The No Change alternative was selected for the proposed Port Hueneme RFA. As a result, the safety fairway of Port Hueneme will not be added as a RFA to the commercial lobster fishing regulations. The No Change option was selected by the Commission to allow additional action to be undertaken by the Port's Harbor Safety Committee to craft a balanced approach between maintaining safe navigation while continuing commercial lobster fishing opportunities in Port Hueneme.

Without regulatory change, the Dana Point Harbor RFA will not reflect current vessel traffic patterns and will not make available fishing grounds traditionally fished by commercial lobster fishermen.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the regulatory action will not substantially increase compliance costs, is not anticipated to impact harvest quantities, and only applies to a fishery that is unique to the state of California. The commercial spiny lobster fishery extends from Point Conception in Santa Barbara County to the U.S.-Mexico border. The recreational spiny lobster fishery covers the same range but also extends further north into San Luis Obispo County.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission anticipates no negative impacts on the creation or elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses because the proposed action will not significantly increase costs or reduce harvest quantities. The recreational gear marking changes are designed to accommodate efficient business practices without sacrificing gear accountability. The adjustment to the Dana Point Harbor RFA will create an efficient safe passage for vessels entering and leaving the harbor with no expected change to lobster harvest quantities for the fishery. **The No Change Alternative was selected for the Port Hueneme RFA, which will allow commercial lobster fishing to continue in the Port Hueneme safety fairway while additional action is undertaken by the Port's Harbor Safety Committee to craft a balanced approach between maintaining safe navigation while continuing commercial lobster fishing opportunities in Port Hueneme.**

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

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

(f) Programs Mandated on Local Agencies or School Districts:

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

(h) Effect on Housing Costs:

None.

Updated Informative Digest/Policy Statement Overview

Summary of Proposed Amendments

Under current regulations, Section 29.80, Title 14 of the California Code of Regulations (CCR) governs gear restrictions for recreational crustacean fishing in California and Section 122 specifies spiny lobster permits and restricted fishing areas for commercial lobster activities.

The Fish and Game Commission (Commission) proposes to amend subsections (a) and (b) of Section 29.80 concerning recreational crab trap and hoop net buoy marking, respectively. The proposed amendment to subsection 29.80(a)(3) would exempt a person from having their GO ID number on crab trap buoys when operating recreational crab traps belonging to another fisherman, provided that the fisherman operating the crab trap has written permission (i.e., a note) from the owner(s) of the traps. Written permission may be transmitted electronically (e.g., a text message) from owner to operator and is valid only if it contains the GO ID number of the owner, and that GO ID number must also be on the buoy of the trap being pulled.

In addition, an amendment to subsection 29.80(b)(3) is proposed to clarify the current hoop net buoy marking requirements. The Commission proposes to add subsection 29.80(b)(3)(A) requiring the buoys of hoop nets deployed from Commercial Passenger Fishing Vessels (CPFVs) to be marked with the corresponding CPFV number and subsection 29.80(b)(3)(B) requiring licensed guides to mark buoys with their guide license number for hoop nets provided to clients for use on trips.

The proposed action would also amend the restricted fishing areas (RFAs) specified in subsection (d)(2) of Section 122. The Commission proposes to modify the Dana Point Harbor **restricted fishing area (RFA)** (subsection 122(d)(2)(B)) from a southerly orientation to a more westerly orientation. Additionally, a new RFA for Port Hueneme **was originally proposed to be added as** subsection 122(d)(2)(D), which would cover approximately 3.25 square nautical miles. Lobster traps would be prohibited within the proposed RFA for operational and navigational safety. **Due to the significant public interest generated by the Port Hueneme RFA proposal, the Commission adopted all of the proposed regulations, except for the Port Hueneme RFA. The No Change Alternative was selected by the Commission while additional action is undertaken by the Port's Harbor Safety Committee to craft a balanced approach between maintaining safe navigation while continuing commercial lobster fishing opportunities in Port Hueneme.**

Other minor, non-substantive changes are proposed to subsection 29.80(a)(2) to fix a grammatical error (minor re-wording of text) and subsections 29.80(c)(2)-(c)(4) to remove the August 1, 2016, start date as these regulations are currently in effect.

At the April 27, 2017 Commission meeting, a representative from the Port of Hueneme (Port) indicated that the Port currently holds a neutral position in regard to proposed subsection 122(d)(2)(D), which would establish a new RFA for Port Hueneme under the commercial lobster fishing regulations. The Port's Board of Harbor Commissioners had not sanctioned the petition request to add Port Hueneme as a RFA in the commercial lobster fishing regulations; therefore, the Port request that the Commission not to rely upon the January 2016 petition letter from the Port as a document for supporting the regulation change. The Port, however, supports its Harbor Safety Committee to serve as the lead for the proposal moving forward since this topic had been vetted at the committee level.

In addition to testimony from Port representatives, the Commission took public testimony on the proposed Port Hueneme RFA from lobster fishermen at the April 2017 Commission meeting. In response to concerns raised by commercial lobster fishermen during the discussion hearing, the Commission instructed the Port's Harbor Safety Committee to continue discussions with commercial lobster fishermen to determine if a compromise could be reached on the proposed Port Hueneme RFA.

Since that time, the Oxnard Harbor District, which owns and operates the Port, hired an independent third party to facilitate discussions between the Port and affected stakeholders to develop a new proposal. Based on those discussions, a proposal with new RFA boundary lines was presented at a special meeting of Harbor Safety Committee on June 6, 2017. The Harbor Safety Committee voted on the revised boundary lines and submitted a letter to the Commission requesting the current proposed regulations be modified using the revised boundary lines provided in the letter. A significant number of public comments received by the Commission were opposed to the proposal.

On June 22, 2017, the Commission adopted the staff recommendation for actions on the proposed amendments to sections 29.80 and 122, Title 14. All of the proposed regulatory changes to the crab and lobster recreational gear marking and commercial harbor restricted fishing areas were adopted, with the exception of the proposed Port Hueneme RFA for which the No Change Alternative was selected. The Commission further directed staff to continue working on a compromise solution for Port Hueneme.

Proposed subsection 122(d)(2)(D), commercial lobster RFA for Port Hueneme, was remove entirely from the final adopted regulatory text.

Benefits of the Regulations

The proposed amendments related to lobster and crab gear marking would preserve

accountable recreational gear use and allow the recreational sector to meet the gear marking requirements with minimal regulatory burdens. The modification to the Dana Point Harbor RFA will improve the efficiency and safety of the fairway while providing additional commercial lobster fishing in an area that is currently restricted.

Consistency and Compatibility with Existing Regulations

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to adopt sport fishing regulations (Fish and Game Code, sections 200, 202 and 205) as well as the power to regulate the take of lobster for commercial purposes (Fish and Game Code Section 8254). No other state agency has the authority to regulate the recreational take of marine crustaceans or the commercial take of spiny lobster.

Comments and Summary of Response to Comments

Comments and a summary of response to comments in Tab 12 is incorporated herein.