

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

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. 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

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

In October 2015, the California Fish and Game Commission (Commission) adopted recreational crab trap regulations that included a new requirement to mark crab trap buoys (subsection 29.80(c)(3), Title 14, California Code of Regulations) starting August 1, 2016. During the adoption hearing, a representative from the recreational fishing community identified a discontinuity in the provision of subsection 29.80(a)(3) as it relates to subsection 29.80(c)(3) and subsequently requested the Commission consider a change to the regulatory language to address this issue. The Commission adopted the recreational crab trap regulations as proposed by the California Department of Fish and Wildlife (Department) at that time with the caveat that further corrective action may be needed to address the issue once the regulations have been implemented. This proposed regulatory change is necessary to allow a long-standing fishing practice of sharing gear and for consistency with subsection (c)(3) of Section 29.80 regarding crab trap buoy marking requirements.

In June 2016, the Commission adopted the California Spiny Lobster Fishery Management Plan (FMP) implementing regulations that amended and added to existing commercial and recreational lobster regulations to improve the management of the spiny lobster resource and support an orderly fishery. The regulatory amendments included changes to Section 29.80, which governs gear restrictions for recreational crustacean fishing activities in California and Section 122, which specifies commercial spiny lobster permits and commercial lobster restricted fishing areas (RFA). These regulations become effective on April 1, 2017. During the rulemaking process, the Commission received public comments identifying possible issues with the new requirement for marking hoop net buoys under Section 29.80 and restricted fishing areas for the commercial lobster fishery as specified under subsection (d) of Section 122.

To address concerns raised by the public, the Commission is proposing changes to 1) recreational gear marking requirements for hoop nets and crab traps and 2) commercial lobster restricted fishing areas as described below. In addition, 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.

Amend Section 29.80(a)(3), Title 14, CCR; Clarify Recreational Crab Trap Buoy Marking Requirements.

Under current regulations, each recreational crab trap must be marked with a buoy and the buoy must be legibly marked with the operator's GO ID number as stated on his or her fishing license (subsection 29.80(c)(3)). This requirement, however, does not consider the provision for operating another fisherman's trap with written permission (i.e., a note) from the owner of the trap (subsection 29.80(a)(3)). It is common fishing practice for a fisherman to allow other fishermen to use and service his or her crab traps that are deployed in the ocean. However, when a deployed trap is operated under written permission from the owner, the buoy may not have been marked in advance with the operator's GO ID number(s) of the person(s) now using the deployed trap (i.e., the operator). Recreational fishing constituents initially raised the issue at the October 2015 Commission meeting and sought further clarification.

The proposed amendment would modify subsection 29.80(a)(3) to exempt recreational crab fishermen from the GO ID marking requirement when working sport crab traps under the authority of written permission from the owner and clarify that written permission may be sent electronically (e.g., a text message). Operators must possess a valid note from the traps'

owner giving them permission to operate the traps, and the note must contain the GO ID number of the owner. Furthermore, the GO ID number on the note must match the GO ID number on the buoys. The proposed regulatory change is necessary to allow a long-standing fishing practice of sharing gear and for consistency with subsection (c)(3) of Section 29.80 regarding crab trap buoy marking requirements.

Amend Subsection 29.80(b)(3) and add Subsections 29.80(b)(3)(A) and 29.80(b)(3)(B), Title 14, CCR; Hoop Net Buoy Marking Requirements.

Beginning on April 1, 2017, subsection 29.80(b)(3) will require hoop nets used south of Point Arguello (except those deployed from shore or from manmade structures connected to shore) to be legibly marked with a surface buoy containing the operator's GO ID number as stated on the operator's sport fishing license or lobster report card for the purpose of minimizing gear loss and improving the accountability of hoop net use in the ocean. However, at the March 2016 Marine Resources Committee meeting, several members of the public expressed concern that the new requirement would place a potential burden on fishing guide license holders and Commercial Passenger Fishing Vessel (CPFV) operations, which take customers on fishing trips for lobster and provide hoop nets for use by their clients or passengers. The regulation as currently written would require guide license holders and CPFV operators to mark each customer's GO ID number on the hoop net buoy(s) that the customer would be operating during a trip, which would need to be repeated for each trip.

The proposed amendment would add subsection 29.80(b)(3)(A) to require the buoys of hoop nets deployed from CPFVs to be marked with the corresponding CPFV number. The proposed amendment would also add subsection 29.80(b)(3)(B) to require the buoy of hoop nets provided by licensed guides to clients for use on guided trips to be marked with the guide license number of the accompanying guide. Clients who supply and operate their own hoop nets when working with a licensed guide are still required to mark the hoop net buoys with their individual GO ID numbers as stated on their sport fishing license or lobster report card. Non-substantive amendments to section 29.80(b)(3) are also proposed to improve the section and reference the proposed new subsections. The proposed change is needed to avoid undue hardship for businesses that rely on providing their gear to customers for recreational fishing. As a practical consideration, it would be more efficient for CPFV operators and guide license holders to mark the hoop net buoys with the identification number of the CPFV, or the license number of the accompanying guide,

respectively.

Amend Subsection 122(d)(2)(B), Title 14, CCR; Dana Point Harbor Restricted Fishing Area.

Beginning on April 1, 2017, the boundary descriptions of all navigation channel restricted fishing areas (RFAs) applicable only to commercial lobster fishing will be updated to latitude and longitude coordinates in subsection 122(d)(2). The original RFA descriptions used compass headings and distances between landmarks that are outdated, as most boaters and fishermen use GPS devices for navigation. The Dana Point RFA was initially created to reduce navigational hazards due to commercial lobster gear while minimizing economic impact to the commercial fishermen.

The latitude and longitude RFA coordinates for Dana Point Harbor entrance (subsection 122(d)(2)(B)) were reviewed by the Dana Cove Commercial Fishermen's Association (DCCFA). The DCCFA found that the navigational channel, as currently defined by the RFA, does not represent traffic patterns around Dana Point Harbor. The DCCFA also found that although the coordinates for subsection 122(d)(2)(B) properly reflect the existing description, the updated RFA description included an area that has been traditionally fished by commercial lobster fishermen. The DCCFA submitted a letter (Attachment 1) to the Commission and the Department on May 16, 2016, detailing proposed modifications to the RFA for the Dana Point Harbor entrance to better reflect current harbor traffic conditions in Dana Point as well as make available traditional fishing grounds on the easterly boundary of the RFA (Figure 1).

The proposed amendment would modify the Dana Point Harbor RFA from a southerly approach (180°) to a more westerly approach (200°) to align the RFA with current traffic patterns in the harbor. This modification would open a traditional lobster fishing area, while providing a navigational channel void of commercial lobster gear for vessels entering and leaving the harbor, most of which are heading towards or returning from areas west of Dana Point.

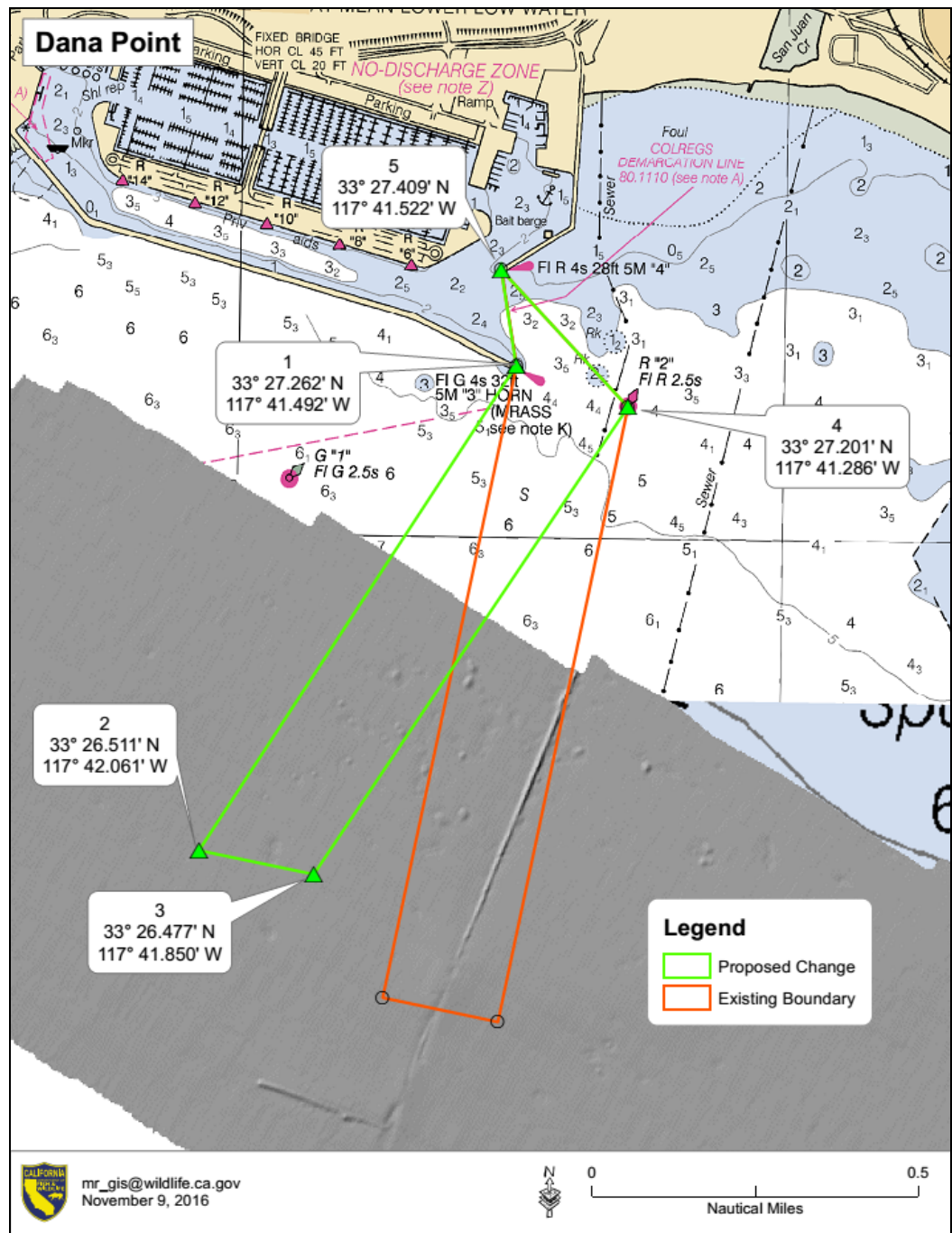


Figure 1. Proposed boundary modifications to the Dana Point Harbor entrance restricted commercial fishing area.

Add Subsection 122(d)(2)(D), Title 14, CCR; Port Hueneme Restricted Fishing Area.

On January 28, 2016, the Port of Hueneme (Port) submitted a letter (Attachment 2) to the Commission requesting the designation of a new RFA for the entirety of the Port Hueneme safety fairway as shown on NOAA Chart 18724 (Figure 2). The letter noted that the safety fairway of the Port has consistently experienced commercial gear deployment, mainly lobster gear, and the placement of commercial lobster gear within the operating areas of the Port poses a hazard to navigational safety. The Department analyzed the commercial lobster logbook data reported for fishing block 683, which encompasses the safety fairway of the Port and surrounding area (Figure 3). The data indicate that commercial lobster fishing effort (number of trap pulls) has substantially increased in block 683 since the 2005-06 lobster season (Figure 4).

The proposed amendment would designate the safety fairway of the Port as a new RFA under new subsection 122(d)(2)(D) (Figure 2). This designation is necessary to reduce the potential for commercial lobster gear fouling vessel propellers and ensure continued safety of port operations and navigation. The proposed RFA is consistent with the RFAs listed in subsection 122(d)(2) restricting the use of commercial lobster gear around harbor entrances located in Newport Beach, Dana Point, and Oceanside.

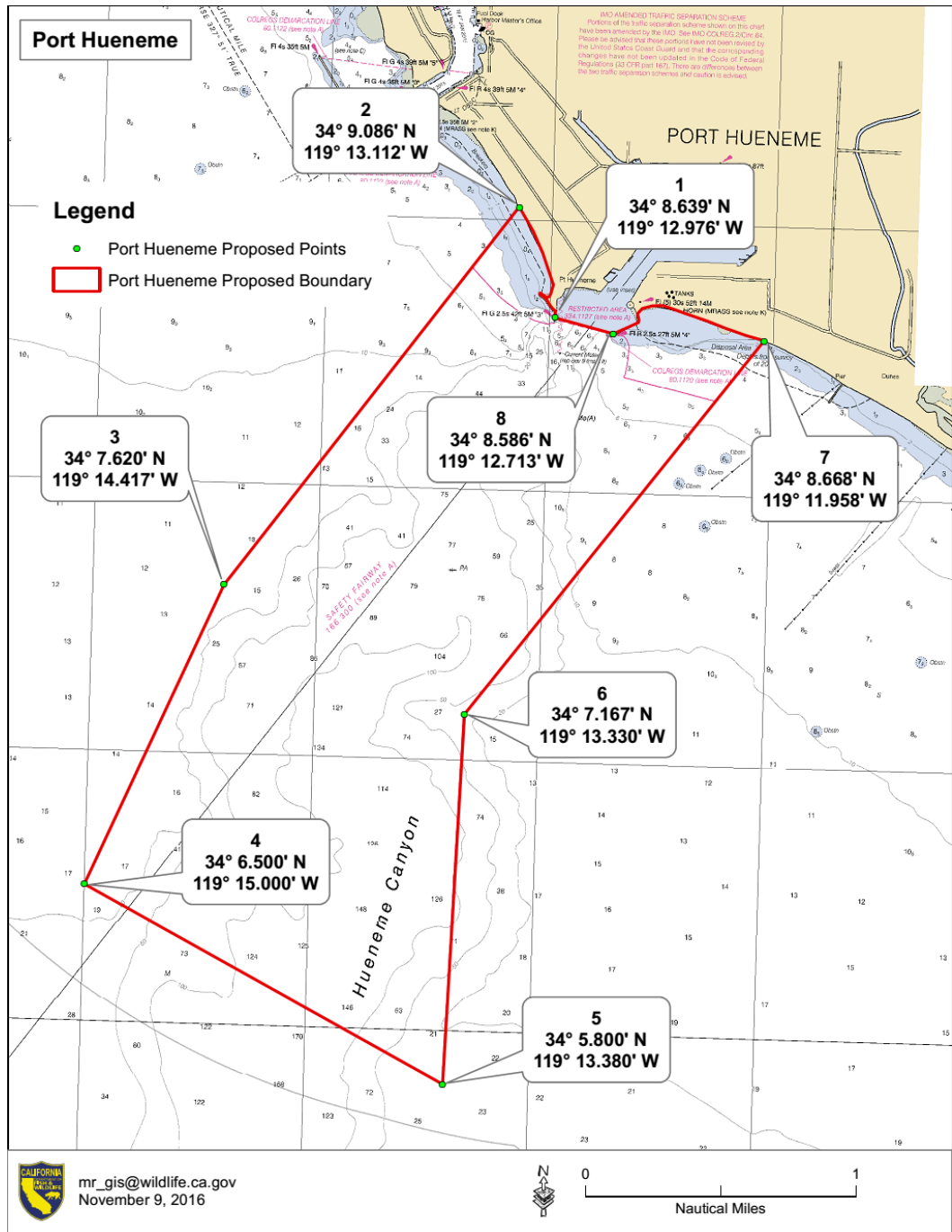


Figure 2. Proposed restricted fishing area boundary for the Port Hueneme Safety Fairway.

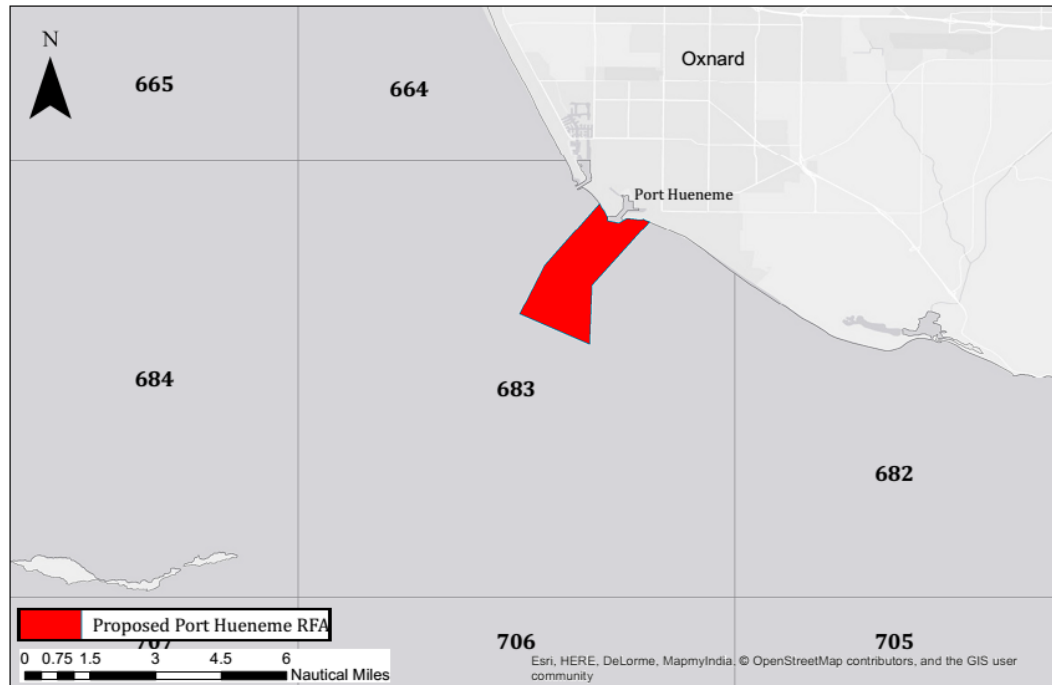


Figure 3. Map showing the extent of the proposed Port Hueneme commercial lobster restricted fishing area (RFA) relative to fishing block 683.

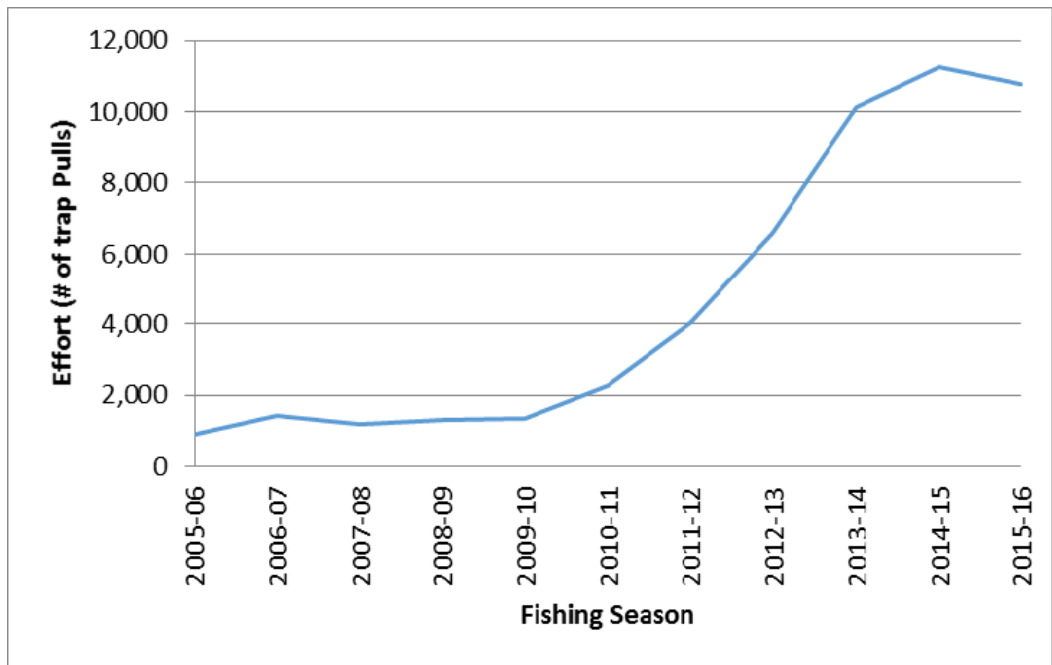


Figure 4. Commercial lobster fishing effort (trap pulls) for fishing block 683 from the 2005 – 2015 fishing seasons.

Benefit of the Proposed Regulations

It is the policy of this State that conservation and management measures for a restricted access fishery include modifications that contribute to a more orderly and sustainable fishery. (Section 7082(b), Fish and Game Code.) The proposed regulation changes are intended to provide clarification of the regulatory language concerning buoy marking requirements for hoop nets and crab traps, minimize the potential for trap gear and vessel entanglement, and improve safety in navigational channels where commercial lobster fishing currently occurs.

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

Authority: Sections 200, 205, 265, 275, 1050, 7075, 7078, 8254 and 8259, Fish and Game Code.

Reference: Sections 110, 200, 205, 265, 275, 1050, 2365, 2535, 2536, 2538, 7050, 7055, 7056, 7071, 7852.2, 8026, 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

Roger Healy, DCCFA, Letter to the Fish and Game Commission and the Department of Fish and Wildlife, May 16, 2016.

Attachment 2

John Demers, the Port of Hueneme, Letter to the Fish and Game Commission, January 28, 2016.

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

January 10, 2017, Port of Hueneme District Office, California. The proposed Port Hueneme RFA was presented and discussed at an outreach meeting with commercial lobster fishing constituents and interested members of the public.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

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 CPFVs, guided operations, and the recreational sector in general. Commercial lobster gear will continue to pose a hazard to safe navigation in the Port Hueneme safety fairway. 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 proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

V. Mitigation Measures Required by Regulatory Action:

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

VI. 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 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 and proposed new Port Hueneme RFA will create an efficient safe passage for vessels entering and leaving the harbors with no expected change to lobster harvest quantities for the fishery.

- (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.

VII. 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. This rank is achieved, despite having amongst the lowest harvest volume, by having generally the highest value per pound of all California fisheries. The fishery is a restricted access fishery with about 150 permits actively fished since 2008.

The average total statewide economic output is estimated at \$34,477,000, based on the 2012-13 to 2014-15 seasons, supporting about 495 FTE jobs. The economic impact of the catch by each south coast county for the 2014-15 season is shown in Table 1. The commercial lobster fishery adds about \$6.9 million in total value added (also called net economic output) to Santa Barbara County, \$2.2 million to Ventura County, \$3.4 million to Los Angeles County, \$2.1 million to Orange County, and \$5.1 million to San Diego County.

Table 1. Commercial Lobster Fishery Economic Impacts by County for 2014-15 Season

County	Ex-Vessel Value (2015\$)	Total Lobster- Associated Employment (2015)	Employee Compensation (2015)	Total Value Added (2015)	Total Economic Output (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.

The proposed modification to the Dana Point Harbor RFA to a more westerly approach would have no negative economic impacts because the realignment would result in increased access to a traditional lobster fishing area. Opening access to areas with favorable conditions may increase harvest quantities and/or decrease harvest costs.

The proposed new Port Hueneme RFA would prohibit commercial lobster fishing in approximately 3.25 square nautical miles inside fishing block 683 (Figure 3), which covers about 78 square nautical miles off the Ventura County coast.

According to landing receipt data for the 2015-16 lobster season, 11 commercial fishermen landed 5,008 pounds of lobster from fishing block 683 with an ex-vessel value of \$102,000. As a whole, the fishery landed 793,861 pounds of lobster with an ex-vessel value of \$15,628,167. For the 2015-16 season, block 683 accounted for 0.63 percent of the total landings and 0.65 percent of the ex-vessel value for the fishery. The 11 fishermen that made landings from block 683, obtained between 1 and 25 percent of their catch from block 683, with the majority obtaining between 1 and 5 percent. However, with landing receipt data it is not possible to determine the portion of reported landings from block 683 originating from within the proposed Port Hueneme RFA. It has been reported and observed by Department personnel that only a few fisherman operate in the proposed Port Hueneme RFA. Therefore, the potential annual economic impact of the Port Hueneme RFA will likely be substantially less than the reported \$102,000, because only a small portion of block 683 would be closed to commercial lobster fishing. Additionally, it is anticipated that current commercial lobster fishing activity inside the proposed Port Hueneme RFA will likely be redirected to other open areas.

The proposed regulations are designed to preserve efficient business practices without sacrificing important conservation and safety objectives.

(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 simultaneously promote safety, efficient business practices, and gear accountability.

(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 simultaneously promote safety, efficient business practices, and gear accountability.

(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 simultaneously promote safety, efficient business practices, and gear accountability.

(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. These actions are intended to simultaneously promote safety, efficient business practices, and gear accountability.

(e) Benefits of the Regulation to Worker Safety:

The Commission anticipates that this regulatory action will benefit worker safety by improving operational and navigational safety by decreasing the risk of commercial lobster gear fouling propellers of vessels entering and leaving Port Hueneme.

(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)). These actions are intended to simultaneously promote safety, efficient business practices, and gear accountability.

(g) Other Benefits of the Regulation:

None

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 RFA (subsection 122(d)(2)(B) from a southerly orientation to a more westerly orientation. Additionally, a new RFA for Port Hueneme is proposed in 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.

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.

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. The proposed Port Hueneme RFA would improve operational and navigational safety by decreasing the risk of commercial lobster gear fouling propellers as vessels enter and leave the port.

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.