

## Memorandum

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Date: March 20, 2015

To: Sonke Mastrup  
Executive Director  
Fish and Game Commission

From: Charlton H. Bonham  
Director

*Don / Savary*

Subject: **Agenda Item for the April 8-9, 2015 Fish and Game Commission Meeting Regarding Transmittal of the California Department of Fish and Wildlife Recommended Regulatory Changes for the Commercial and Recreational California Spiny Lobster Fisheries**

### Background

An extensive public scoping process was used by the Department of Fish and Wildlife (Department) to develop implementing regulations for a Spiny Lobster Fishery Management Plan. The Department established the Lobster Advisory Committee (LAC) as a formal stakeholder group who met over a period of two years (2012-2013) to make management recommendations, including regulatory changes. The LAC consisted of seated representatives from a broad spectrum of constituencies. Through consensus, the LAC approved a management framework that established proposed mechanisms to promote an orderly fishery while assuring sustainability and also taking into account the economic implications of that same framework. In deference to the LAC, the Department has made every effort to recommend FMP implementing regulations that are consistent with the LAC consensus-based proposals.

A number of the LAC consensus recommendations acknowledged that the details of the proposed rules needed to be worked out with the Department's Law Enforcement Division (LED). Accordingly, representatives from LED and Marine Region 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.

In order to implement the Lobster FMP as currently envisioned, the Department is recommending regulatory changes based upon the LAC recommendations, as clarified by LED review, and supplemented to provide improved catch data and an orderly fishery. While the specifics of the proposed regulatory language are still under development, the Department's recommendation is provided to refine the details prior to the formal regulatory process.

The Department's recommendations support all consensus LAC proposed regulatory changes except the LAC recommendation to restrict the use of mechanized pullers in the recreational fishery only to persons in possession of

proof of disability. In addition, the Department is recommending regulatory changes not addressed by the LAC that include changes to the commercial logbook to improve data collection and a 14 day time limit for unserviced traps to be considered abandoned. A description of the LAC recommendations and LED input on those recommendations is provided in the appended reports.

## **Summary of Department-recommended Spiny Lobster Regulation Changes**

### *Recreational Regulatory Changes*

#### Hole-punching/ fin-clipping

- Allow both tail clipping and tail punching as an option: remove at least the bottom half of central tail fin or single hole punch the center tail fin with a hole no less than ¼ inch in diameter.
- The tail must be clipped or punched at the same time the catch information is reported on the report card (T14 29.91(C)): When the cardholder moves to another location code, or finishes fishing for the day, he or she must immediately record on the card the number of lobster kept from that location.
- Proposed requirement provides a tool for LED to address the illegal commercialization of sport caught lobsters. Requiring sport fishermen to clip or punch the center tail flap makes it possible for LED to identify lobsters caught in the recreational fishery that end up in the market.

#### New Recreational Season Opener

- Establish a 6:00 am Saturday start time.
- Easier to conduct enforcement patrols.
- Promotes a safer environment for both boaters and divers on opening day
- Reduces the “rush” mentality which fuels negative diver/hoop netter interactions at harbors and jetties.

#### Marking hoop net floats

- Buoy identification should be required with GO ID number. This number shall be legible, but there will be no size or color specification. Go ID number helps maintain fishermen’s confidentiality, and minimizes the risk of identity theft
- LED can easily verify this number in the field as it can be cross-referenced with the fishing license.

#### Clarifying existing language on definition of a “hooked” device

- Remove “hooked device” from section that describes how sport lobster may be taken.
- Clarify that regulations describe how lobster may be taken
- It is redundant and confusing to only partially describe how they may not be taken.

The Department does not recommend restricting the use of mechanized pullers beyond current legal use

- The potential for illegal use given the circumstance is not viewed as a reasonable justification for restriction.
- Illegal use of mechanized pullers is not a commonly observed problem. LED reported one case over ten years ago, with four lobsters taken from a commercial trap using a mechanized puller.
- The creation of disabled hoop net puller permit creates an unnecessary burden on disabled persons through the potential added expense and time to obtain the necessary note from a physician in order to obtain a permit.

### *Commercial Regulatory Changes*

#### Trap limit

- The Department recommends a trap limit of 300 traps with the ability to stack another permit for a maximum of 2 permits (2 permits X 300 traps = 600 trap maximum). The second permit remains transferable, and the death provision only applies to transferable permits.
- The Department recognizes that a "Phase-In Stacking Permit" may no longer be necessary given the projected timeline for the proposed implementing regulations. New regulations would become effective for the 2016/2017 season.

#### All traps must be tagged

- Traps shall be tagged with Department issued trap tags
- 300 trap tags shall be issued once a year to each permittee before the start of the season.
- Program costs to be incorporated into permit fees, and tags will not be purchased separately.

#### Catastrophic gear loss provision

- The Department recommends that catastrophic loss be defined as the loss of 75 or more tags per permit. Catastrophic loss claims will be formally submitted to the Department for approval. LED will determine whether to approve or deny catastrophic loss claims. Claim information must include a detailed description of the circumstance that caused the loss, date of loss, number of traps lost along with their tag numbers, and location of lost traps (Latitude and Longitude coordinates).
- Catastrophic loss tags would be uniquely identifiable.

#### Allow scuba equipment on board commercial vessels

- Scuba gear currently allowed per T14 Section 122, cannot be used for "take".
- Provide clarification that no lobsters can be taken or possessed with scuba gear, or any other underwater breathing apparatus (including hookah).

However, this equipment can be used to locate and secure (retrieve) traps.

- Provide clarification that lobsters contained in a trap that has been secured using scuba gear, or any other underwater breathing apparatus equipment (including hookah), may be possessed after the trap has been serviced aboard the vessel.

More than one permittee may operate from a single vessel

- Each permittee whose traps are being pulled must be aboard.
- Dual Permittee on board – both permittees will be responsible for any violation found on vessel.

7 day soak time using “Federal Rules” regarding weather

- Adopt similar language to CFR Title 50 §660.230(3).
- Traps must be attended at least once every 7 days. No specific weather exemption. If traps cannot be pulled due to weather, fishermen will be responsible for burden of proof (e.g. NOAA weather advisory, or other formal documentation from a government weather agency).

Limit use of “note” to service another permittee’s traps

- Formalize the “note” process by requiring permittees to submit a waiver request to the Department. Waiver should be similar to the Dungeness Crab Waiver to Pull Traps.
- Specific protocol and procedures for the Lobster Waiver to be established by LED.
- The Department will determine each waiver request on individual case basis. The information submitted in the waiver request will be used to determine the conditions. Lobsters may not be retained unless specified as a condition on the waiver.
- Department to be notified in advance.
- Responsibility for violations is transferred to the individual permittee that has permission to pull.
- Traps need to be either removed from water or wired open as specified as a condition on the waiver.
- Establish provision to allow other fishermen targeting other species to recover lost or derelict gear (if found more than 9 days after the close of lobster season). This would be modeled after the existing provision for the recovery of up to 6 Dungeness crab traps.

Allow commercial fishermen to start hauling their traps to sea before the season starts on the Monday before opening week (9 days before the commercial opener) and allow traps with doors open to remain in the water not more than 9 days after the close of the season

- Allow traps to be deployed (unbaited and doors wired open) 9 days before the commercial opener, and allow traps to remain in the water (unbaited and

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doors wired open) not more than 9 days after the close of the season. Traps must be out of the water no later than 9 day after the close of the season.

- "Bait day" remains the same.

#### Branding of floats allowed

- This LAC proposal is already covered by existing regulations, and so is not included as a Department recommendation for regulatory change. However, the following clarification is provided to encourage effective compliance. Each buoy identifying a lobster trap shall display the commercial fishing license identification number of the lobster operator permit holder followed by the letter P. The commercial fishing license number and the letter P shall be at least one (1) inch in height and at least one-eighth (1/8) inch in width, and either branded on the buoy in a way that is clearly readable or painted in a color that contrasts with that of the buoy. All lobster permit holders shall maintain lobster trap buoys in such a condition that buoy identifying numbers are clearly readable.

#### *Additional Recommendations (Not addressed by the LAC)*

Traps are required to be serviced every 96 hours per FGC §9004

- Traps that are wired open and unbaited during the specified pre- or post-season allowance would be exempt from the trap service requirement for a period up to 14 days. Traps that have not been serviced after 14 days would be considered abandoned.

#### Improving Fishery Dependent Data Collection

- The Department recommends several changes to the format of the daily lobster logs and landing receipts to improve fishery dependent data collection which is needed to manage the spiny lobster fishery as outlined in the draft FMP.

If you have any questions or need additional information, please contact Dr. Craig Shuman, Regional Manager of the Marine Region, by telephone at (805) 568-0216 or by email at [craig.shuman@wildlife.ca.gov](mailto:craig.shuman@wildlife.ca.gov)

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