

**TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations**

**(Continuation of California Notice Register 2003, No. 42-Z; and 2004, 19-Z and 28-Z,
and Meetings of August 1 and December 5, 2003; and May 4 and August 27, 2004)**

(NOTE: See Updated Informative Digest changes shown in bold face type.)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 7071, 7078, 7701, 7708, 7923, 8026, 8425 and 8429.5 of the Fish and Game Code and to implement, interpret or make specific sections 7050, 7070, 7071, 7075, 7078, 7082, 7083, 7086, 7652, 7701, 7708, 7923, 8026, 8081, 8420, 8425, 8429.5 and 8429.7 of said Code, proposes to add sections 53.00, 53.01, 53.02, 53.03, 149.1, 149.2, 149.3, and 149.4, and amend Section 149, Title 14, California Code of Regulations, regarding Market Squid Fishery Management Plan, commercial take of market squid, and market squid restricted access program.

Updated Informative Digest/Policy Statement Overview

At the Commission's August 27, 2004 adoption hearing, action was taken to adopt the Market Squid Fishery Management Plan and implementing regulations, certify the environmental document, and adopt fishery management measures, including a restricted access program for the commercial squid fishery.

While the Commission acted on most components of the proposed regulations of the rulemaking package, it directed the Department to modify the proposed options relating to non-transferable permits. Based on public comment, the Commission indicated that it wished to consider permit qualifying criteria that were not included among the options provided in the Initial Statement of Reasons. This document serves to revise the options for consideration for non-transferable permits, as well as to modify specific sections of the regulatory text following adoption on August 27, 2004, to better capture the intent of the Commission as expressed in its motion. The following items describe the proposed changes to the regulatory text and the remaining decisions to be made by the Commission at its second adoption hearing on December 3, 2004. The Final Statement of Reasons will include all decisions made by the Commission at both meetings.

1. Proposed Subsection (g) of Section 149, Title 14, CCR, Commercial Taking of Market Squid.
At the August 27, 2004 adoption hearing, the Commission moved to establish a closure to all squid fishing activity using lights in the Gulf of Farallones National Marine Sanctuary, with the boundaries of the Sanctuary being defined as those that are currently in effect. The action was taken to provide protection to seabird colonies at the Farallon Islands and Point Reyes, and was not intended as a seasonal closure nor a general habitat closure. Modification to the originally noticed regulatory text was needed to reflect these determinations.

2. Subsection (b) of Proposed Section 149.1, Market Squid Fishery Restricted Access Program.
At the August 27, 2004 adoption hearing, the Commission moved to establish both transferable and non-transferable permit classes for Market Squid Vessel and Brail permits. The regulatory text of this subsection was amended for clarity and specificity with regard to the activities authorized under each class of permit.

3. Subsection (c) of Proposed Section 149.1, Market Squid Fishery Restricted Access Program.
The text of this subsection required amendment once the Commission specified at the August 27, 2004 adoption hearing that in order to qualify for a future permit of any permit class, the owner must possess a squid permit for the 2004-2005 fishing year. Previous versions of the regulatory text allowed individuals to qualify for a non-transferable permit

without holding a current permit. The language was further clarified to specify that during initial permit issuance, a permit must be placed only on a vessel that was licensed as either a market squid vessel or light boat in the 2004-2005 fishing season, and which must also be the vessel upon which the qualifying catches were made.

4. Subsection (c)(2) of Proposed Section 149.1, Market Squid Fishery Restricted Access Program. The text of this subsection outlines the requirements for initial permit issuance for Non-Transferable Market Squid Vessel Permits. At its August 27, 2004 meeting, the Commission specified a requirement that individuals possess a 2004-2005 squid vessel permit in order to qualify for a future permit. In addition, the Commission requested the Department expand the range of qualifying catch criteria based on landings history. Non-Transferable permits were established by the Commission to provide an opportunity for 20-year California fishermen to continue in the squid fishery if they had participated in one or more prior years, pursuant to Section 8101 of the Fish and Game Code.

Additionally, the updated regulatory text will now allow the Commission to require a minimum of [20-75] landings in any one fishing season for non-transferable vessel permit issuance, and to select the years in which that fishing activity must have occurred. The Commission may require that the catches have been made in any single fishing season (April through March of the following year). Only landing receipts dated [between January 1, 1990 and March 31, 2003] or [between January 1, 1998 and March 31, 2003] or [before August 27, 2004] will be counted toward qualification. See Table 1 below for information on the number of anticipated qualifiers under each of these window period options.

Alternatively, the Commission may select initial issuance criteria for non-transferable vessel permits based on catch history that was made over a time period greater than a single season. The Commission may require a minimum of [20-150] landings at any time prior to August 27, 2004. See Table 2 below for information on the number of anticipated qualifiers.

Table 1. Estimated number of fishermen that may qualify for a non-transferable market squid vessel permit based on (1) the possession of an 04/05 market squid vessel permit, (2) the possession of a California Commercial Fishing License for at least 20 years, and (3) having made at least [20-75] landings during any one season as recorded by their fishing license identification number. Because the Department does not have precise information on 20-year fishermen, and because many vessels are owned by corporations rather than individuals, a range of estimates is provided. While the lowest value in the range reflects the number of individuals that the Department anticipates are 20-year fishermen, a maximum number of potential qualifiers (where the 20-year criteria is not considered) is provided for reference.

Number of Landings in a Single Season	I. 1/1/1998 through 3/31/2003	II. 1/1/1990 through 3/31/2003	III. Prior to 8/27/2004 (no window period)
20	6-12	10-17	14-23
33	2	6-11	7-15
40	2	4-8	4-14
50	2	3-6	4-11
75	1	1	1-2

Table 2. Estimated number of fishermen that may qualify for a non-transferable market squid vessel permit based on (1) the possession of an 04/05 market squid vessel permit, (2) the possession of a California Commercial Fishing License for at least 20 years, and (3) having made at least [20-150] total landings prior to August 27, 2004 as recorded by their fishing license identification number. Because the Department does not have precise information on 20-year fishermen, and because many vessels are owned by corporations rather than individuals, a range of estimates is provided. While the lowest value in the range reflects the number of individuals that the Department anticipates are 20-year fishermen, a maximum number of potential qualifiers (where the 20-year criteria is not considered) is provided for reference.

Total Number of Landings	Prior to 8/27/2004 (No Window Period)
20	18-30
33	12-25
40	11-21
50	11-20
75	7-14
100	7-12
125	5-12
150	3-9

5. Subsection (c)(4) of Proposed Section 149.1, Market Squid Fishery Restricted Access Program. The text of this subsection outlines the requirements for initial permit issuance for Non-Transferable Market Squid Brail Permits. Non-Transferable permits were established by the Commission to provide an opportunity for 20-year California fishermen to continue in the squid fishery if they had participated in one or more prior years, pursuant to Section 8101 of the Fish and Game Code. Because the Commission specified a requirement that individuals possess a 2004-2005 squid vessel or light boat permit for qualification of 20-year grandfather permits, much of the proposed regulatory text of this subsection for brail permits was amended for consistency with the non-transferable vessel permit class. The revised regulatory text is simpler as there is no longer a need to establish a complex set of criteria that would limit the number of potential qualifiers.

However, because the Commission did adopt the specific qualifying catch history for this class of permit at the August 27, 2004 adoption hearing (10 brail landings in a season between January 1, 2000 and March 31, 2003), the proposed regulatory text reflects the actions taken, and the prior options were eliminated.

6. Subsection (d) of Proposed Section 149.1, Market Squid Fishery Restricted Access Program. The text of this subsection describes the initial permit issuance application process, requirements and deadlines. The Department proposes the Commission approve an amendment to the adopted regulatory text to specify that the Market Squid Permit application form number is FG 1315 (8/04), and it is incorporated by reference into the regulations. The form reference was not available at the time the prior notice was filed.

7. Subsection (g) of Proposed Section 149.1, Market Squid Fishery Restricted Access Program. The text of this subsection describes permit renewal application processes, requirements and deadlines. The Department proposes the Commission approve an amendment to the adopted regulatory text to specify that the Market Squid Permit renewal application form number is FG 1315 (8/04), and it is incorporated by reference into the regulations. The form reference was not available at the time the prior notice was filed.

8. Subsection (k) of Proposed Section 149.1, Market Squid Fishery Restricted Access Program. Regulations in this subsection clarify that if a partnership or corporation to which a

transferable squid permit is issued is dissolved, the partnership or corporation must notify the Department of the dissolution and specify a successor. The Department proposes to add a clarifying sentence to specify that change of ownership provisions defined in subsection (l) and transfer fees in subsection (i)(2) are applicable to this situation.

9. Subsection (o) of Proposed Section 149.1, Market Squid Fishery Restricted Access Program.

The text of this subsection describes the process by which transferable permits may be placed on a replacement vessel. At its August 27, 2004 adoption hearing, the Commission adopted transfer provisions for Transferable Market Squid Vessel Permits and Market Squid Brail Permits that allow for these permits to be placed on vessels of comparable capacity (within 10 percent of the gross tonnage of the original vessel). Additionally, for Transferable Market Squid Vessel Permits, if the replacement vessel is not of comparable capacity, a permit may still be issued a permit with surrender of two permits that, in sum, add up to capacity that is comparable to the replacement vessel. Modifications were made to the proposed regulatory text of this subsection to reflect the actions taken as well as to make technical corrections (text of subsections (o)(5) and (o)(6) was inadvertently included twice). Other text was added to clarify provisions related to estate transfers and to specify the transfer process for Non-Transferable Market Squid Vessel Permits and Non-Transferable Brail Permits to replacement vessels, as follows:

- In the event of death of the holder of a Transferable Market Squid Vessel Permit, Transferable Market Squid Brail Permit, or a Transferable Market Squid Light Boat Permit, the estate must apply for transfer of the permit to another entity within one year of the permitholder's death.
- A Non-Transferable Market Squid Vessel Permit or a Non-Transferable Market Squid Brail Permit may not be transferred to another owner or vessel, except in the event the permitted vessel is lost, stolen or destroyed, or has suffered a major mechanical breakdown, the permit may be placed on a replacement vessel of comparable capacity, with proof that the permitted vessel is lost, stolen, or destroyed in the form of a copy of the report filed with the United States Coast Guard or any other law enforcement agency. In the case of mechanical breakdown, the application shall include an estimate of the costs to repair the vessel from a marine surveyor or boat repair yard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the **Beach Resort, Bay View Room, 2600 Sand Dunes Drive, Monterey, CA**, on Friday, December 3, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before November 24, 2004 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but all comments must be received no later than December 3, 2004, at the hearing in Monterey, CA. All written comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Robert R. Treanor or Sherrie Koell at the preceding address or phone number. **Dale Sweetnam, Department of Fish and Game, phone (858) 546-7170, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of

Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

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 Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The Commission has made an initial determination that the adoption of the recommended regulations may result in adverse economic impacts directly affecting California's small businesses associated with the market squid fishery. However, the potential economic impacts would not affect the ability of California's small businesses to compete with businesses in other states.

Implementing restricted access fishery regulations and ensuing fleet reductions, could result in potential direct ex-vessel revenue losses as high as \$3,047,071 fleet wide. This is based on averaged 5-year landings information. On an individual basis, these losses could range from \$38,000 to \$98,000 (before deducting costs of doing business) for each fisherman removed from the fishery. Details of these potential impacts are presented in the Market Squid Fishery Management Plan, dated July 7, 2003, Section 1, Table 3-21. Contact the Agency representative named herein for a complete analysis of the impacts.

Reducing the statewide seasonal harvest to levels ranging from 11,000 to 80,000 short tons, could result in potential ex-vessel revenue losses of \$1,700,000 to \$17,400,000 for the squid fleet statewide. Potential direct revenue losses to individual fishermen will depend on how many fishermen remained in the fishery, but could range from \$7,400 to \$117,500 per individual (before deducting costs of doing business).

An updated evaluation of adverse economic impacts is now available, and is included in the Market Squid Fishery Management Plan (dated April 12, 2004).

The regulations proposed would directly affect approximately 230 commercial market squid fishermen and light boat operators. The direct impacts to the private sector will depend on which of the proposed management measures and regulations are adopted. There are three primary areas of the proposed regulations that may have significant

economic impact to the businesses associated with the market squid fishery:

- Seasonal and regional catch limits; ranging from 22,000,000 to 250,000,000 pounds statewide (11,000 to 125,000 short tons), and 11,000,000 to 223,200,000 pounds regionally (5,500 to 111,600 short tons),
- Implementation of a Restricted Access Squid Fishery; no new permits would be issued and permit renewal is subject to eligibility criteria intended to reduce the fleet size from about 230 permittees to as many as 148 to 199 permittees,
- Changes to annual permit fees; ranging from \$400 to \$5,000.

Average market squid landings for calendar years 2001 and 2002 were 183,050,000 pounds statewide (91,525 short tons) at an ex-vessel value of about \$20,800,000. Among the roughly 230 market squid permit holders, this represents potential individual revenues of approximately \$90,400 annually (on average and before deducting costs of doing business). Reducing the statewide seasonal harvest to levels less than recent landings, at levels ranging from 22,000,000 to 160,000,000 pounds (11,000 to 80,000 short tons), would result in potential ex-vessel revenue losses of \$1,700,000 to \$17,400,000 for the squid fleet statewide. The majority of these impacts would occur in the Counties of Monterey, Santa Barbara, and Los Angeles, where most market squid landings are made. Potential revenue losses to individual fishermen would depend on how many fishermen remained in the fishery. Other proposed statewide seasonal levels of 236,000,000 and 250,000,000 pounds (118,000 and 125,000 short tons) would not present an economic impact to the fishery since these levels are above average catches in recent years.

Proposed regional catch limits, for the area North of Point Conception and area South of Point Conception, could impact local coastal communities disproportionately through reduced catch levels. The proposed 11,000,000 to 15,200,000 pound catch limits (5,500 to 7,600 short tons) for the North region and 131,000,000 to 233,000,000 pounds (65,500 to 111,600 short tons) for the South region potentially results in a much larger impact to fishermen in the North region. Recent landings information for the two regions (for calendar years 2001 and 2002 averaged), were about 75,200,000 pounds (37,600 short tons) for the North region and about 274,800,000 pounds (137,400 short tons) in the South annually. The potential loss in ex-vessel revenue for the North region fishermen ranges from \$6.8 million to \$7 million (an 80 percent to 85 percent reduction from recent landings revenues), and ranges from \$5.8 to \$16 million (a 19 percent to 52 percent reduction from recent landings revenues) for South region fishermen. However, since Northern landings were unusually high in calendar year 2002, these impact estimates are likely to be overstated.

Regulations that would establish a restricted access fishery work in tandem with proposed eligibility criteria to determine which fishermen will remain in the fishery. Depending on the criteria adopted, the fleet of permittees may be reduced by 31 to 81 permits, in order to arrive at a fleet of 148 to 199 permittees. The proposed eligibility criteria are crafted to exclude fishermen who historically have had only marginal participation in the fishery; for example excluded fishermen may represent only 17 percent of the seasonal ex-vessel revenue generated by the entire fleet. Thus potential ex-vessel revenue losses to individual fishermen culled from the fishery, based on

averaged 5-year landings information, could range from \$38,000 to \$98,000 per permittee (before deducting costs of doing business).

New fees may be stipulated under the proposed regulations, depending on which regulatory options are adopted. Currently, annual permit fees for market squid light boats and market squid fishermen are \$400. The regulations propose new annual fees ranging from \$400 to \$5,000. Permit transfer fees (or upgrade fees) currently at \$250 per transfer, may range from \$250 to \$1,000, depending on which regulations are adopted. The projected financial impact of the proposed permit fees to the average fisherman, calculated as the Present Value of permit fees paid over a 5-year time period, discounted at the 2002 Federal 5-year Treasury Bill rate of 3.82 percent, ranges from \$1,800 to \$22,400.

The proposed regulations may result in changes in seasonal market squid harvests statewide. Reducing the statewide seasonal harvest to levels less than recent landings, at levels ranging from 22,000,000 pounds to 160,000,000 pounds (11,000 to 80,000 short tons), would result in potential ex-vessel revenue losses of \$1,700,000 to \$17,400,000 for the squid fleet statewide. Extrapolating these potential revenue losses to the local economies, through the use of an output demand multiplier of 1.61, yields economic impact estimates of \$2,700,000 to \$28,000,000 in lost economic output demand statewide. Proposed statewide seasonal catch levels of 236,000,000 and 250,000,000 pounds statewide (118,000 and 125,000 short tons) would not present a statewide economic impact to the fishery since these levels are above average catches in recent years.

Statewide costs or economic impacts associated with implementing a restricted access fishery, and the ensuing loss of fishermen through permit reductions, are based on an estimated \$3.7 million loss in ex-vessel revenue production capacity due to fleet reduction. Apportioning this \$3.7 million among the respective local economies and using appropriate output demand multipliers, yields potential reduction of \$6 million to \$7.8 million statewide in economic demand output (this recognizes that each \$1 of ex-vessel revenue generates \$1.61 to \$2.05 in economic activity for local economies). Further details on these economic impacts are presented in the April 12, 2004, Market Squid Fishery Management Plan, see Section 3, Item 1.1.3.

The Commission has made an initial determination that the amendment of these regulations may have a significant, statewide adverse economic impact directly affecting businesses. The Commission has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit alternative proposals. Submissions may include the following considerations:

- (i) the establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses;
- (ii) consolidation or simplification of compliance and reporting requirements for businesses;
- (iii) the use of performance standards rather than prescriptive standards; or
- (iv) exemption or partial exemption from the regulatory requirements for business.

- (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:

Regulations to establish a restricted access fishery and the associated eligibility criteria may result in loss of 31 to 81 market squid fishing jobs.

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

Reducing the statewide seasonal harvest to levels ranging from 11,000 to 80,000 short tons, could result in potential ex-vessel revenue losses of \$1,700,000 to \$17,400,000 for the squid fleet statewide. Potential direct revenue losses to individual fishermen will depend on how many fishermen remained in the fishery, but could range from \$7,400 to \$117,500 per individual (before deducting costs of doing business).

Implementing restricted access fishery regulations and ensuing fleet reductions, could result in potential direct ex-vessel revenue losses as high as \$3,047,071 fleet wide. This is based on averaged 5-year landings information. On an individual basis, these losses could range from \$38,000 to \$98,000 (before deducting costs of doing business) for each fisherman removed from the fishery. Details of these potential impacts are presented in the Market Squid Fishery Management Plan, dated July 7, 2003, Section 1, Table 3-21. Contact the Agency representative named herein for a complete analysis of the impacts.

Other private person or business costs impacts that could arise from the proposed action are increases in market squid permit fees. Currently market squid permits fees are set at \$400 annually, and depending on the regulations adopted could increase to as much as \$5,000 annually.

- (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: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Date: October 5, 2004

Robert R. Treanor
Executive Director