

The Nearshore Fisheries Management Act of 1998 (Fish and Game Code Section 8587.1) delegated authority for the nearshore fishery, including regulation of the type and amount of gear used, to the Commission upon adoption of a management plan for this fishery. The Commission adopted a Nearshore Fishery Management Plan (NFMP) in 2002 and established regulations for the primary gear (hook and line) used in the commercial nearshore fishery (Section 150.17, Title 14, California Code of Regulations (CCR)). The proposed rulemaking would place existing Statutes into regulation for the secondary gear (trap gear) used in the commercial nearshore fishery.

Two minor changes, to what currently exists in Statute, are proposed. The first change would require consistent finfish trap buoy marking statewide, and the second would require consistent finfish trap construction statewide.

Currently, Statutes regarding finfish traps are slightly different depending on whether fishing takes place north or south of Point Arguello. At present, only finfish trap fishermen fishing south of Point Arguello are required to mark their buoys with their commercial fishing license number followed by the letter "Z". Finfish trap fishermen fishing north of Point Arguello are required to mark their buoys with only their commercial fishing license numbers. The proposed change would require all Nearshore Fishery Permit (NFP) holders with trap endorsements or Deeper Nearshore Species Fishery Permit (DNSFP) holders to mark their finfish trap buoys with their commercial fishing license number followed by the letter "Z". This would make the trap buoy marking requirements consistent statewide. Additionally, this would make it easier for enforcement to distinguish between a finfish trap used for nearshore species from another type of trap.

Currently, the finfish trap mesh size must be "exactly" 2 inches by 2 inches for finfish traps fished south of Point Arguello. The mesh of finfish traps used north of Point Arguello can be a "minimum" of 2 inches by 2 inches. This proposed change would require all NFP holders with trap endorsements and DNSFP holders statewide to use finfish traps constructed of mesh measuring a minimum of 2 inches by 2 inches.

Bringing all the necessary and existing finfish trap requirements for the nearshore fishery into regulation is appropriate, as the Commission now manages this fishery through the NFMP. It also reduces confusion for the public and provides a more responsive management process in which to make adaptive management changes.

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

Authority: Sections 7071, 8282, 8500, and 8587.1, Fish and Game Code.

Reference: Sections 7071, 7850, 8254, 8282, 8500, 8585.5, 8587, 8587.1, 9001, 9001.5, 9001.6, 9001.7, 9003, 9004, 9005, and 9006, Fish and Game Code.

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

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

Nearshore Fishery Management Plan, adopted October 25, 2002.
Department of Fish and Game.

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

No public meetings are being held prior to the notice publication.

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

One alternative is to allow NFP holders with trap endorsements and DNSFP holders to mark their finfish trap buoys with only their commercial fishing license numbers. However, this would make it difficult for enforcement to determine what species is being targeted as the trap buoys for spot prawn, Dungeness crab and hagfish are marked only with the commercial fishing license number.

A second alternative is to require the mesh size for finfish traps used to take nearshore species to be exactly 2 inches by 2 inches statewide. However, that would impact any NFP holder with a trap endorsement or DNSFP holder fishing north of Point Arguello who has finfish traps with a mesh size greater than 2 inches by 2 inches. Additionally, there would be no benefit to the resource by restricting traps to this single mesh size.

A third alternative would be to only adopt the finfish trap limitations specifically for the area south of Point Arguello. Thus, if the legislature does not reauthorize FGC Section 9001.6, nearshore fishermen fishing with finfish traps south of Point Arguello would still be regulated. Adopting this alternative could be confusing for both fishermen and enforcement because 1) the nearshore trap fishing requirements differ by region and 2) when fishing north of Point Arguello one would have to consult the Fish and Game Code, while fishing south of Point Arguello would require

consulting Title 14, CCR. Additionally, the NMFP established four regions for managing this fishery. The use of Point Arguello as a management boundary does not conform to the regional structure within the NFMP and could create considerable confusion.

(b) No Change Alternative:

Fish and Game Code Section 9001.6 is due to sunset on April 1, 2005. This section establishes finfish trap limitations south of Point Arguello. Unless the Legislature reauthorizes this Fish and Game Code Section, nearshore trap fishermen fishing south of Point Arguello, including all South Coast Region NFP holders along with some South-Central Coast Region NFP holders, will be unregulated.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

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. These regulations reflect Statutes already in effect for this fishery, thus there will be no change in current business practices.

(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: None.

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

Informative Digest/Policy Statement Overview

Current regulations governing the nearshore fishery include regional management, trip limits for state-managed species, size limits, a commercial restricted access program, and a limitation on the number of hooks. Current finfish trap requirements are contained in Statute and the specific requirements for trapping south of Point Arguello will sunset April 1, 2005. A moratorium permit has also been established for fishermen taking the deeper nearshore species. The Legislature delegated authority for the nearshore fishery, including regulation of the amount and type of gear, to the Commission upon adoption of a management plan for this fishery. The Commission adopted a Nearshore Fishery Management Plan in October 2002 and established regulations limiting hook and line gear in the nearshore fishery. The proposed action would appropriately establish, in regulation, the finfish trap limitations currently in Statute, with two minor changes.

Existing Statute Requirements to be Established in Regulation:

Possession of lobster with nearshore fish stocks

Allows possession of both lobster and nearshore fish stocks providing:

- At least one individual must possess a valid Nearshore Fishery Permit (NFP) and trap endorsement or Deeper Nearshore Species Fishery Permit (DNSFP).
- All individuals on board must possess a valid lobster permit.

Bait

- Lobster and crabs, other than rock crab, cannot be used as bait.
- Rock crab can be used as bait subject to Section 125, Title 14, California Code of Regulations (CCR). (Note: Section 125, Title 14, CCR, has been adopted by the Commission but is yet not effective).
- Nearshore fish traps are required to be unbaited with the door open between sunset and sunrise.

Trap construction

- Timed buoy release mechanisms or “pop-up” devices cannot be used.
- Each trap must have at least one destruction device.
- Trap destruction devices shall conform to Section 180.2, Title 14, CCR.
- The use of metal rings shall conform to Section 180.4, Title 14, CCR.

Number of traps and areas fished

- Maximum of 50 traps can be used within one mile of the mainland coast.
- Traps cannot be used within 750 feet of any pier, breakwall, or jetty.
- Each trap must be serviced regularly.

Minor changes:

- Finfish trap buoys used under a NFP and trap endorsement or DNSFP must be identified on the buoy with the commercial fishing license number followed by the

letter "Z". Buoys on nearshore finfish traps used anywhere in the state will now have the same marking requirements.

- Finfish traps used under a NFP and trap endorsement or DNSFP must be constructed with a minimum mesh size of 2 inches by 2 inches. There will no longer be a requirement that finfish traps be constructed of mesh measuring exactly 2 inches by 2 inches.