

authorized gear, and because dip net/dive landings made a small contribution to the overall commercial landings of nearshore fishes. A nearshore permittee recently expressed interest in using dip nets. The proposed regulations would provide for a gear that was used prior to the implementation of the restricted access program for the nearshore fishery.

The proposed regulations would not change the current authorization to use hook-and-line gear, nor would they change the current trap gear endorsement program. It is unclear how many nearshore permittees would use this gear or what changes to the fishery might result.

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

Authority: Sections 1050 and 8587.1, Fish and Game Code.

Reference: Sections 1050, 7850, 8587, and 8587.1, 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:

The request to consider allowing the use of dip nets in the commercial nearshore fishery came from a nearshore fishery permittee, and was discussed at the August 26-27, Fish and Game Commission meeting in Morro Bay, California.

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

Establishing a gear endorsement program for dip nets was considered. This option was rejected as being too complex, too expensive and unnecessary. The number of nearshore fishery permittees involved in the dive fishery is very limited (at most 35).

(b) No Change Alternative:

Not adopting changes would prevent fishermen from using dip nets in the nearshore fishery.

(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.

The proposed action will allow current Nearshore Fishery Permit holders to use gear that has historically been used in the nearshore fishery but not authorized under current regulations. The proposed action will not allow new permittees into the fishery and will not remove any current permittees from the fishery.

(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

The Fish and Game Code, under general license provisions, authorizes the Department to prepare and issue licenses and permits and authorizes the Commission to determine the terms and conditions of permits. In 1998, the Legislature adopted the Nearshore Fisheries Management Act which provides authority to the Commission for the nearshore fishery. Included in this legislation is the authority to adopt a fishery management plan for nearshore fish stocks and regulations as determined necessary to regulate nearshore fish stocks and fisheries. The regulatory authority includes, but is not limited to, the establishment of limitations on the fishery based on type of gear and further specifies that any regulation adopted pursuant to this section shall be adopted following consultation with fishery participants.

The Commission adopted a Nearshore Fishery Management Plan in 2002 and established limitations on gear use in the nearshore fishery. The Commission also adopted a restricted access program that specifies the gears that can be used in the nearshore fishery. Hook-and-line gear or other gears authorized under a Nearshore Fishery Permit gear endorsement are allowed to be used. Currently, trap gear is the only gear endorsement.

A fishery participant requested that the Commission provide for the use of dip nets in the nearshore fishery. The proposed regulation would establish dip net as an authorized gear for all Nearshore Fishery Permit holders. The proposed regulations would not change the current authorization to use hook-and-line gear nor would it change the trap gear endorsement program.