



that trap gear may be used for the take of spot prawn with minimal impact on overfished rockfish populations.

However, California already has a restricted access spot prawn trap fishery (trap fishery) with 22 vessels (17 Tier 1 vessels and five Tier 2 vessels), which is above the existing capacity goal of 17 vessels. The Commission adopted this capacity goal based on analysis of recent trap catch history and participation levels. The current trap fishery would stand to suffer substantial impacts should a conversion program be implemented that disregards its existing fishery capacity, the distinctions of the trap fishery relative to the trawl fishery, or the economic impacts that might result to the existing trap fishery if too many additional participants are allowed into the program.

Therefore, the Department is recommending a restrictive spot prawn trawl to trap fishery conversion program (conversion program) which would add a limited number of additional permits to the spot prawn trap vessel restricted access fishery. These permits would be available to owners of former spot prawn trawl vessels that meet vessel-based qualifying requirements based on prior trawl catch history. The proposed regulatory options would not create a new and separate restricted access trap fishery program. To the extent possible, regulations governing the existing trap fishery would also apply to vessels fishing under the permits issued as a result of the conversion program.

When selecting the optimum number of conversion permits to issue, it will be critical for the Commission to balance the potential harm to the existing trap fishery participants who would face increased competition against the economic loss already suffered by vessel owners now precluded from taking spot prawn utilizing trawl gear, many of whom relied on the fishery for nearly 100 percent of their income.

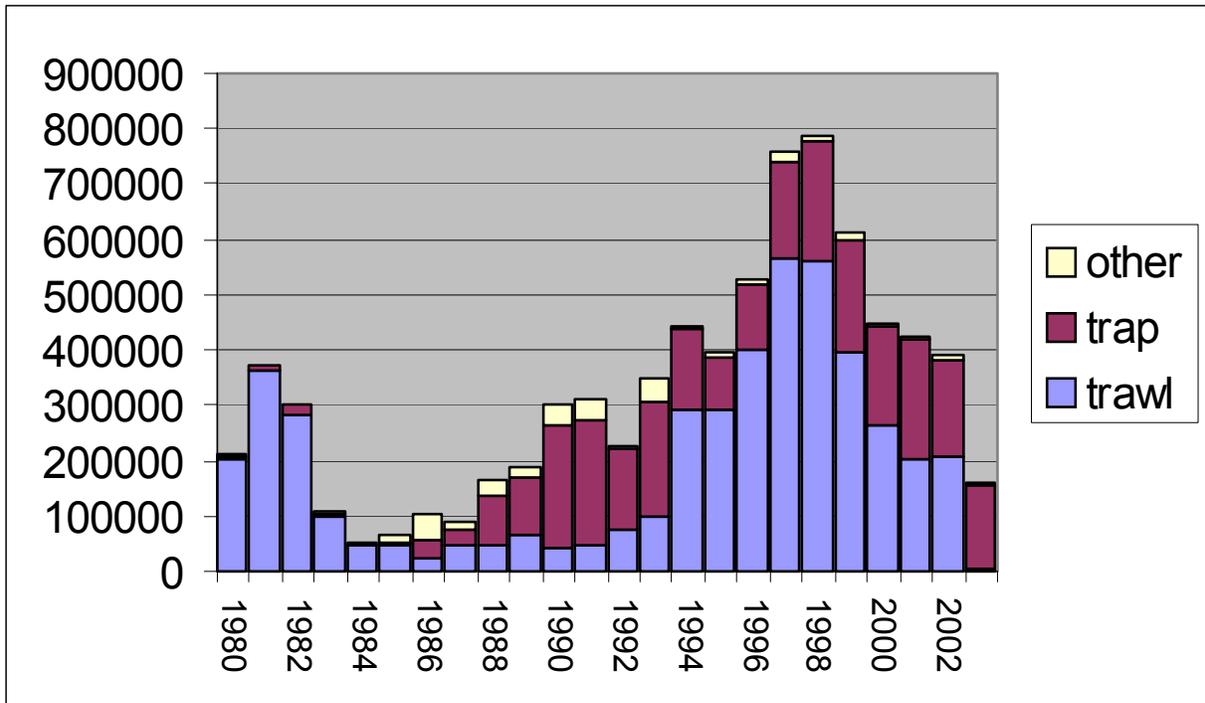


Figure 1. Annual spot prawn landings (pounds) in California by gear type.

At this time, the Department is unable to determine, from a biological resource perspective, what harvest level of the spot prawn population may be sustainable, and therefore, how many fishermen or vessels the trap fishery might sustain. However, because the spot prawn trawl fishery previously landed approximately two-thirds of the annual catch of spot prawn (Figure 1), and this portion of the catch will not be made in the future due to the prohibition on the use of trawl gear, it is not likely that adding some additional trap fishermen will lead to overharvesting of the resource, although there may be concern for localized resource depletion if a particular area becomes more heavily utilized.

As a result, unless the trap fishery dramatically increases production, the issues surrounding the number of permits to issue through the conversion program must be based on the social and economic concerns of the two sectors of the fishery rather than on purely biological considerations.

In discussions with both the existing trap fleet and the displaced trawl fleet, some members of both groups have suggested ways to mitigate the impact of the program once it is implemented so as to limit fishing effort in the future trap fishery, or organize the fishery in such a way so that competition is minimized. For example, some existing trap fishermen would prefer to see creation of fishing zones which would preserve the historic trap grounds for their use exclusively. Alternatively, some trawlers feel that all 45 prior vessels should be granted future access rights to spot prawn using trap gear, but instead place restrictions on some of these individuals so that they may only land a

limited amount of spot prawn per year or that they may utilize only a minimum number of traps.

The Department is not recommending that the Commission consider those measures which would serve to substantially complicate existing spot prawn trap fishing regulations and the conversion program without a clear resource benefit. Furthermore, they would likely be burdensome to the Department in terms of enforcement and regulatory development (also see "Reasonable Alternatives Considered," Section IV (a)). If the Commission balances the interests of the two competing groups of fishermen by selecting an optimum number of new trap fishery participants who would fish under the same rules as the existing permittees, additional management measures to address perceived inequities would not be necessary.

### Permit Structure

Existing law provides for a spot prawn trap restricted access program with a vessel-based, two-tier permit structure (Section 180.3, Title 14, California Code of Regulations (CCR)). These regulations, which became effective in April 2002 allow for and regulate both major and minor participants in the trap fishery. Tier 1 permits are fully transferable as of April 1, 2005 and have no limit on the annual catch of spot prawns per vessel. Tier 1 permit holders may use no more than 500 traps (exception: no more than 300 traps may be used north of Point Arguello within 3 miles of the mainland shore). Conversely, Tier 2 permits are not transferable, impose an annual catch limit of 2,500 pounds, and limit permit holders to using no more than 150 traps. In the 2002-2003 permit year, the fishery had eighteen Tier 1 and three Tier 2 permits. For the 2003-2004 permit year, the fishery had seventeen Tier 1 and five Tier 2 permits.

The Department is proposing that the Commission adopt regulations that would create a third tier of spot prawn trap permits, otherwise known as trawl conversion permits. While the Tier 3 permits are intended to mirror the Tier 1 permits in terms of what the permits authorize, regulations are needed to distinguish between the two groups in terms of initial permit issuance criteria, applicable transferability and application dates. Although the current fee for Tier 1 permits is established at \$250, the Department is proposing the Commission consider selecting an annual Tier 3 permit fee from a range between \$250 and \$1000 in order to partially offset costs to the Department of implementing the conversion program.

### Fishery Capacity Goals

Under the Commission's restricted access policy, the primary goal of restricting access to fisheries is to match the level of effort in a fishery to the health and sustainability of the fishery resource. This optimum level of effort from all fishery participants is known as capacity goal and can be expressed in many ways. These include number of vessels, number of permittees, vessel length, horsepower, tonnage, or storage capacity, and type or amount of gear. In the case of the restricted access spot prawn trap fishery, the level of effort was best expressed as the number of vessels, since each vessel is limited by a maximum number of traps under current regulations. Because biomass

estimates or stock assessments are unavailable for the spot prawn resource, the health of the resource is currently best expressed as the average annual landings during a period of relatively stable effort.

Existing regulations specify that the capacity goals for the spot prawn trap fishery are seventeen Tier 1 and zero Tier 2 permits. The Department recommended the Commission establish these capacity goals based on analysis of the average annual harvest for the trap fishery and the average annual landings for each of the principal trap vessels during the period 1996 to 2000 (average annual fishery harvest divided by average vessel landings).

As of March 31, 2004, the existing trap fishery is at the capacity goal for Tier 1 permits (17), and above the capacity goal of zero for Tier 2 permits (5). Therefore, adding any additional vessels to the existing fleet of Tier 1 vessels will mean that there will be more excess capacity added to the fleet above the optimum capacity, and the fishery will be further overcapitalized.

The Department recognizes that these capacity goals were determined at a time when the spot prawn trawl fishery was responsible for the majority of the spot prawn catch, and it is possible that with the elimination of the trawl fishery there may be room for additional trap vessels. In other words, the "optimum" amount of effort to match the available resource may be greater than a total of 17 vessels from all tiers. *However, while there may be a basis for allowing for additional harvest of the spot prawn resource by trap gear resulting from the trawl fishery closure, other factors must be considered, including whether there is adequate fishing area to accommodate more trap vessels and/or room on the existing trap grounds for more trap gear.*

Therefore, at this time, the Department has no basis for recommending a revised capacity goal until the effects of the additional Tier 3 permits can be evaluated, and 17 vessels remains the optimum number of trap vessels in the fishery.

#### Habitat Considerations and Trap Gear

Because the prior trawl fishing grounds include habitat that differs from the traditional trap grounds, it is foreseeable that these areas will not prove as productive as the current trap areas. Although neither the fishery success of Tier 3 trap fishermen nor changes in future catch levels by existing Tier 1 and 2 fishermen can be predicted, some prospecting is likely to occur on at least some portion of the former trawl grounds, in areas where traps can be safely set without substantial risk of gear loss. If these grounds prove productive in the long term, more fishery effort possibly may be accommodated than if the additional Tier 3 fishermen are forced to fish only in the historic trap grounds

Alternatively, it is also possible that the existing trap grounds are in fact not fully utilized at the present time. Under such a scenario, the current trap grounds could actually become more productive due to increased fishing pressure in these areas that may come with a greater fleet size. It is also possible that the closure of the trawl fishery will

allow for increased recruitment of the stock resulting from lower overall harvests, which could lead to higher spot prawn densities on the existing trap grounds.

While the current trap permittees contend that most productive trap fishing areas are fully utilized by the existing trap fleet, the Department has no basis for evaluating this claim short of the prior capacity goal analysis based on trap fishing activity in prior years. From a fishery management standpoint, however, *the Department cautions that a substantial increase in fishing pressure in these existing trap areas especially without success in expanding to other areas which previously were not fished with trap gear may pose risk to the sustainability of the existing trap fishery.*

If, in fact, fishing with traps on the old trawl grounds does not prove productive, and the historic trap grounds are in fact fully utilized by the existing 17 vessels, the best estimate of the fleet capacity goal would remain status quo.

### Selecting a Number of Tier 3 Conversion Permits in Light of Capacity Concerns

The Department proposes that the Commission consider issuing between 1 and 17 Tier 3 permits.

As described above, there is some degree of risk associated with issuing any number of Tier 3 permits, as this will add more excess capacity to the fleet which may create economic harm and disruption to the current trap fishery.

The following considerations also need to be taken into account when determining the number of Tier 3 permits that should be issued. Trawling is a more efficient method of harvesting spot prawns. A large area can be fished in a single drag of a trawl net. Consequently, the prawns can be found in much lower densities and still be economically harvested. It is unlikely that trapping in many of the softer bottom, low relief areas in the former trawl grounds will be economically viable. Traditionally, spot prawn trap fishing has occurred on higher-relief, more complex, hard bottom habitat.

Historically, the most important trawl fishing areas (derived from 10X10 NM fishing block data on fish landing receipts) have been distinct from the most important trap areas, with only minimal overlap. Trap fishermen maintain that in the past two years they have unsuccessfully tried setting traps in areas where the spot prawn trawl vessels previously worked. Trap log data from the past two years verifies that the existing trappers have not expanded into additional fishing block areas. Multiple trap permittees share the most productive areas of the trap grounds and believe those grounds are already fully utilized. If Tier 3 fishermen share the traditional trap blocks with Tier 1 trap fishermen, causing crowding and tangling, a more conservative approach to the number of Tier 3 permits issued should be considered to avoid gear conflicts.

It is also important to consider that the converted trawl vessels are unlikely to be as efficient at prawn trapping as the current trap fleet. The larger trawl vessels are generally slower and less maneuverable than smaller trap vessels. It may take several

years before the converted trap fishermen are fishing at their full potential by optimizing their operations to fish at maximum efficiency.

Setting a string or mainline of traps in deep water, 100 fathoms (600 feet) or greater, is not a precise operation. Depending on the current and other ocean conditions, the strings can drift while they are being set, so another string of traps cannot be set immediately adjacent to another. Among other considerations, how much fishing area an individual spot prawn trapper needs is a function of the size of the vessel, how many traps are used, how frequently the traps are pulled and how productive the habitat is where the traps are set. The amount of viable trap fishing area is a factor that needs to be considered when determining the number of converted permits to issue, and a uniform standard cannot be applied coastwide.

Beginning in 2003, the Council adopted Rockfish Conservation Areas (RCAs) which restrict the use of specified gearchetypes in certain times and areas along the California coast to protect species of overfished groundfish. The trawl RCA is closed year-round to both directed groundfish trawl fishing and “exempted trawl” fishing. Sea cucumber, halibut and ridgeback prawn trawl fisheries are included in the list of “exempted trawl” fisheries that are currently subject to the RCA constraints.

The Council periodically adjusts the RCA boundaries for both directed groundfish and exempted trawl fisheries. The RCA boundaries are usually defined by specifying an inside and an outside depth contour, and fishing may only occur shallower than the inside depth contour and deeper than the outside depth contour. Fishing may not occur with the specified gearchetype in the area between the depth contours.

Because spot prawn trappers are not subject to the RCAs, they are able to operate inside the RCAs without the possibility of gear conflict with any trawl fisheries. Generally speaking, the federal RCA regulations prohibit trawling between 75 to 150 fathoms in depth during most months in most waters off California. These depths and areas include many that are heavily utilized for spot prawn trapping or that previously were utilized for spot prawn trawling. However because the RCA boundaries are subject to change, the amount and location of trapping area that is free from potential conflict with trawl activity at this time cannot be assumed to remain the same in the future.

### Prior Fishery Reliance

The goal of the conversion program is to provide continued access to the spot prawn resource for those fishermen that most relied on the spot prawn trawl fishery prior to its closure in 2003. In determining what might constitute “prior reliance” on the trawl fishery, there are at least three factors which the Department has identified that may be considered, including (not in priority order):

- 1) Longevity in the fishery – these individuals, regardless of the volume landed, have developed a long-term reliance on the opportunity to land spot prawn using trawl gear over a number of years. Based on this reliance, these individuals are likely to have made investments to maintain their gear so that

they could participate over the long-term. Longevity in the fishery can be measured by the number of years in which a vessel has made landings.

- 2) Volume of catch – individuals who made prior high-volume catches have previously relied on this level of income and thus will suffer a greater economic loss from the closure compared with individuals who landed lower volumes.
- 3) Number of landings – individuals who have made a large number of landings, regardless of the volume of catch landed, have consistently produced catches for markets and have helped maintain a steady supply of spot prawns for the markets. The number of landings also may reflect the number of trips made by a vessel, and therefore, the vessel's effort or activity level.

The Department has developed a range of initial qualifying criteria that allows the Commission to select how much value should be placed on each of these reliance factors described above.

### Tier 3 Window Period

The Department proposes the Commission consider limiting the trawl fishery catch history to a qualifying window of 1994 – 2001. Based on Figure 1 above, 1994 was the year in which the trawl fishery began rapid development, and it is reasonable to assume that vessels may have begun substantially investing in gear and developing high-volume markets for spot prawn. Prior to this time, the years of 1983-1993 may have constituted a "lull" in spot prawn trawl activity for several reasons, including trawling opportunities for groundfish or other species, or the onset of the spot prawn trap fishery. Because the catch volume during this time period was not substantial relative to later years, it seems secondary to the goals of the current conversion program to recognize fishery participation during this earlier time period.

Furthermore, the Department recommends ending the window period in 2001 rather than 2002 or 2003, despite the fact that the spot prawn trawl fishery was not closed until 2003. The reason for this recommendation is that in 2002, the Council adopted a prohibition on the possession of groundfish taken in federal waters in the spot prawn trawl fishery due to interactions with overfished groundfish. However, this action did not serve to actually close down the spot prawn trawl fishery, as the action only prohibited the "possession" of groundfish. Had the Council had a mechanism to specifically prohibit spot prawn trawling, it would have done so, and the Department would have conformed the state's rules based on this federal decision instead of having the Commission enact an emergency closure later in the year. As a result, since the intent was to prohibit spot prawn fishing in 2002 in areas where there was interaction with overfished groundfish (which includes virtually all the prior trawl grounds), the Department does not recommend including participation in the 2002 trawl fishery for purposes of the conversion program.

Notwithstanding the Department's recommended window period, the Commission may select a window period that starts any time between 1990 and 2001, and ends any time between 1999 and 2002. This wide range of dates is provided by the Department based on comments received from interested or affected individuals or groups, including the Southern California Trawler's Association, which recommended using a window period that starts at the beginning of the 1990s.

### Tier 3 Initial Issuance Criteria Options

As described above, the Department has proposed establishment of a Tier 3 trawl conversion permit which would authorize commercial take of spot prawn using trap gear under the same regulations as the existing Tier 1 fishery. Therefore, the Department has limited the options to include only those options surrounding initial Tier 3 permit issuance and the annual Tier 3 permit fee. However, the qualifying criteria options provided for initial permit issuance allow the Commission substantial latitude, as the initial issuance criteria is likely to be premised upon the Commission's determinations as to the number of permits it wishes to issue, and based on its findings as to the most equitable approach for determining prior reliance on the trawl fishery.

Since trawl landings of spot prawn are generally larger than those made by trap, the range of volumes proposed is much larger than those used in the qualifying criteria for Tier 1 trap permits. The Commission may select qualifying criteria that would include a minimum catch level over many years in total (between 1,000 to 150,000 pounds), or a minimum annual catch level (1,000 to 20,000 pounds) in each year or in each of a number years, participation (between 1 and 100 landings) in each year or in each of a number years, or the number of landings (1-500) over one or more years or over a number of years.

Another qualifying option factors in the purchase of the 2000-2001 spot prawn trawl observer permit into the qualifying criteria. Eight \$1,000 observer permits were purchased by fishermen whose vessels landed 10,000 pounds or more of spot prawn in 1998 or 1999, and ten \$500 permits were purchased by fishermen whose vessels landed more than 1,000 but less than 10,000 pounds in 1998 or 1999. Twelve of those 18 vessels landed at least 2,000 pounds of spot prawns utilizing trawl gear, in each of the calendar years 1997, 1998, and 1999. This option, in combination with others would recognize the participation of those vessel owners in the management of the fishery.

An option to have at least one spot prawn landing in either 2000 and/or 2001 is provided for use in conjunction with a window period that does not encompass those years to demonstrate recent participation in the fishery.

### Prawn Point Option

In order to preserve diversity in the composition of the trap fishery participants and make the issuance of Tier 3 permits a more equitable process, the Department also created an option utilizing a prawn point system to determine who might qualify for the issuance of a Tier 3 permit. This point system could also be used to qualify vessels for

a lottery for some or all of the converted permits available. As proposed, prawn points would be awarded to a vessel based on three factors:

1. One hundred prawn points would be given for each calendar year the vessel made spot prawn landings with trawl gear during the qualifying period (maximum 800 points);
2. One prawn point would be given for every 200-2000 pounds of spot prawn the vessel landed with trawl gear during the qualifying period (maximum 699 points); and
3. One prawn point would be given for each landing of spot prawn a vessel made with trawl gear during the qualifying period (maximum 391 points).

Under the prawn point strategy, rather than adopting specific initial issuance criteria, the Commission may select a minimum number of points needed to qualify either for initial permit issuance or for a lottery. Alternatively, the Commission may also adopt a strategy that allows for immediate initial permit issuance for those that achieve a minimum point level, and a lottery for others that achieve another lesser point value. The table below provides the number of points earned by the top 50 vessels during the proposed 1994-2001 window period and represents values associated with the Department's recommendation of one prawn point given for every 500 pounds of spot prawn landed with trawl gear from 1994-2001. Figure 2 depicts the point distribution of the top 50 vessels during the window period.

Table 1. Prawn Point Option

VESSEL RANKING	PRAWN POINTS AWARDED			
	Tickets	Years	Pounds	TOTAL
1	312	800	652	1764
2	391	800	504	1695
3	274	700	699	1673
4	258	800	371	1429
5	240	800	170	1210
6	244	500	359	1103
7	182	800	115	1097
8	157	700	192	1049
9	95	700	244	1039
10	160	800	72	1032
11	130	600	296	1026
12	178	500	264	942
13	94	600	236	930
14	137	500	266	903
15	125	700	72	897
16	75	800	15	890
17	138	700	15	853
18	79	700	32	811
19	72	700	15	787
20	53	700	29	782
21	102	500	89	691
22	134	500	30	664
23	58	500	99	657
24	43	600	13	656
25	86	500	53	639
26	119	400	112	631
27	56	500	59	615
28	119	300	194	613
29	6	600	3	609
30	29	500	22	551
31	42	500	6	548
32	33	500	8	541
33	23	500	13	536
34	73	400	63	536
35	21	500	11	532
36	19	500	6	525
37	13	500	4	517
38	94	300	105	499
39	41	400	9	450
40	47	300	82	429
41	15	400	1	416
42	15	400	1	416
43	8	400	2	410
44	49	300	16	365
45	17	300	10	327
46	22	300	3	325
47	17	300	2	319

48	16	300	1	317
49	15	300	2	317
50	13	300	3	316

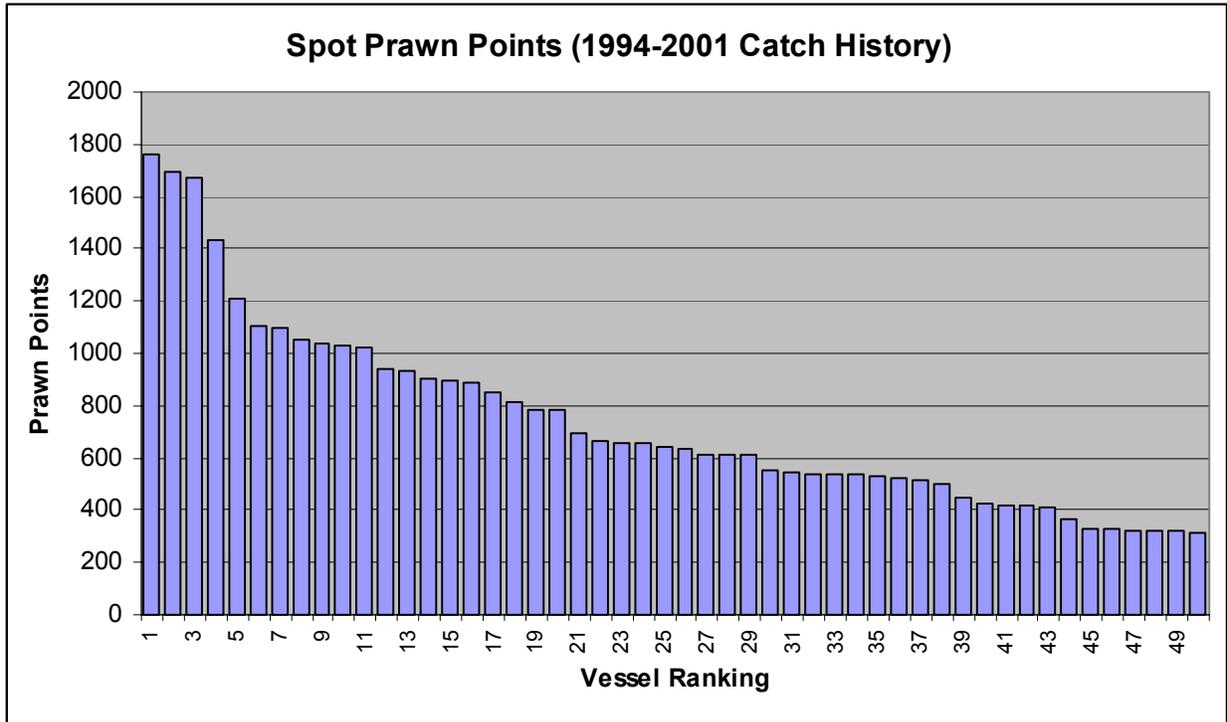


Figure 2. Prawn Point distribution based on vessel rankings from Table 1.

### Lottery Option

Whether traditional landings criteria or the prawn point system is selected for initial permit issuance, the line that separates the qualifiers from the non-qualifiers is difficult to draw from a policy standpoint. If the Commission believes, for example, that 11 individuals are more or less equally deserving of a conversion permit, yet the Commission wishes to issue fewer than 11 permits, the Commission may elect to have a lottery for some or all of the permits.

Regardless of what initial issuance criteria is selected, some vessel owners who landed spot prawns in the past will not qualify for a permit. The Department is trying to accommodate those vessel owners who relied most heavily on the spot prawn trawl fishery in terms of factors described above, while at the same time attempting to avoid fishery overcapitalization and gear conflicts in available trapping grounds.

### Transferability of Tier 3 Permits

Current regulations establish a three-year waiting period from the initial issuance of Tier 1 permits before they can be transferred, with no minimum landing requirements to qualify for transfer. Tier 1 permits may be transferred beginning on April 1, 2005. To be consistent with Tier 1 management, a three-year moratorium on transfer from the time of initial issuance is proposed for the transfer of Tier 3 permits, also with no minimum landings requirement, making them fully transferable on October 1, 2007.

Alternatively, if the Commission were to make Tier 3 permits transferable at the same time as the Tier 1 permits, Tier 1 permit holders who have had to wait for three years to sell their permits would potentially have to compete with Tier 3 permits on the open market. Since very few Tier 1 permits are likely to be up for sale in April 2005, their value is likely to be high. Allowing Tier 3 permits to also be transferable beginning in April 2005 would likely diminish the market value of the Tier 1 permits available for sale.

### Fees and Filing Deadlines

The Department proposes that Tier 3 permits have a permit fee of (\$250.00-\$1000.00), late fees of \$50.00, and a \$200.00 transfer fee. Although Tier 1 and 2 permittees currently have a \$250.00 permit fee, the price is not commensurate with the value of the resource and the amount of Department time spent managing this small but valuable fishery. Application deadlines for initial issuance of Tier 3 permits, including deadlines for late fees, and for appealing denied permits, are proposed to be equivalent to the time increments required for Tier 1 permits. All other administrative aspects of the Tier permit structure are proposed to be the same as those of Tier 1 permits.

### Vessel Owner on Board Permitted Vessel

Current regulations require the owner of the permitted spot prawn trap vessel to be on board when spot prawns are being taken, except that one additional operator may be designated during a license year. The Tier 1 trap permittees have proposed amendment

to this regulation to allow a replacement operator only in the case of a medical/hardship case for both Tier 1 and 3 permittees. They believe that hired operators have no stake in the fishery and frequently create a disorderly fishery because they lack experience setting trap strings and have little regard for the trap gear already on the grounds. However, the trawl fishermen believe that there should be no restriction on replacement operators. The Commission may choose the option of allowing either one replacement operator or any number of replacement operators. In addition the Commission may choose the option of allowing for a replacement operator or operators only in the case of a medical or hardship reason.

#### Reorganization and Clarification of Existing Regulatory Language.

Several non-substantive changes are proposed to the existing regulatory language of 180.1 and 180.3 for clarity, consistency and ease of enforcement.

Section 180.1 on Spot Prawn Fishing defines restrictions on traps used in the fishery. In subsection (a) the reference to the closed season in 2000 is proposed for removal since the effective dates have passed. Subsection (a)(1) specifies that traps may be set and baited beginning at 0600 hours on January 31. This is the last day of the closed season in southern California. Clarifying language was added to specify that the January 31 date applies only to waters south of a line drawn due west from Point Arguello, and traps used north of the Point Arguello line may be set and baited beginning at 0600 hours on July 31, the last day of the closed season in northern California.

Clarifying language is proposed to be added to (a)(2) to specify that traps must be out of the water prior to the beginning of the closed season of May through July north of Point Arguello as is already required during the closed season of November through January south of Point Arguello. Subsection (c) (Trap Limits) would clarify and make specific the trap limits for each of the three permit tiers. The Tier 2 trap limit previously contained in Section 180.3 (b)(2)(C) is proposed to be moved to subsection 180.1(c)(2). Subsection (e), which dealt with an observer fee requirement for the specific period of July 14, 2000 to March 31, 2001, is proposed for removal since effective dates have expired.

Section 180.3 defines the conditions, qualifying criteria, and administrative details of a two-tiered restricted access spot prawn trap fishery. The Section is proposed to be modified so that existing regulations governing the Tier 1 fishery also apply to the Tier 3 fishery. This requires reorganization of existing regulatory text defining permit conditions, initial issuance criteria and transferability provisions, resulting in the addition of new subsection headings throughout for clarity. Subsection (b) will be retitled and a classification for Tier 3 or conversion permits will be added. Subsection (c) becomes specific to the initial issuance criteria for each type of permit. Subsection (d) now addresses a capacity goal of 17 permits for Tiers 1 and 3 combined.

Existing provisions for mechanisms dealing with overcapacity and under capacity situations are proposed for elimination since they only involved the upgrade of a Tier 2 permit, or the 2 for 1 sales of a Tier 1 permit. Given the number of permits issued for the 2004-2005 fishing season, and with the future addition of Tier 3 permits, neither

mechanism for transferability is possible given the future capacity of the fishery following implementation of the conversion program.

Proposed subsection (e) now specifies the initial issuance application deadlines for all three types of permits and references fees in subsection (n). The proposed application for Tier 3 permits is incorporated by number and reference. Subsection (g) addresses permit renewal for all three types of permits and again incorporates the applications by number and reference and also references fees in subsection (n). Other nonsubstantive changes were made in the subsection for clarification.

In subsection (l) the change of ownership of a spot prawn trap vessel permit was addressed for Tier 3 with the same requirements as for Tier 1, although different dates shall apply if adopted. Regarding change of ownership of a spot prawn trap vessel permit; existing regulatory language was clarified so that in the event of death of a transferable permit holder, the permit may be transferred to the decedent's estate, rather than only to an heir. Proposed regulations would still require that the application for transfer be received by the Department within one year of the decedent's death. In subsection (m) appeal provisions for initial issuance of Tier 3 are outlined and parallel Tier 1 only with different deadlines. In subsection (n) dealing with fees, Tier 3 was added with fees identical to those of Tier 1 with the exception of the permit fee where a range is provided.

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

Authority: Section 8591, Fish and Game Code.

Reference: Sections 8590-8594, 9000, 9001, and 9015, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None

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

None

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

Two public scoping sessions were held in January 2004, one in Monterey and one in Santa Barbara, to discuss and expand upon a list of options being developed for the conversion program. Comments were considered during draft revisions of this document.

#### IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

Establishment of Tier 4 Permits: The Department considered and rejected the concept of a Tier 4 permit, which would include a certain number of individuals on a part time or lower-impact basis, by limiting their seasonal catches and the number of traps they may deploy. Tier 4 was designed in concept to mirror the existing Tier 2 permit program. This option was rejected for the following reasons: If the number of Tier 3 conversion permits issued is determined to be adequate, there is no need to consider allowing additional participants on a part-time basis. The conversion program is designed to include only those most reliant on the trawl fishery, and is not meant to compensate part-time prior participants by allowing them future part-time access. Furthermore, the Commission has supported the approach of phasing out the existing Tier 2 permittees. Tier 4 regulations would also come with substantial added burdens to Department enforcement, licensing and regulatory staff. Additionally, it would unnecessarily complicate the proposed conversion program.

Alternatively, the range of Tier 3 qualifying options, coupled with the “lottery” concept, would address the same need to equitably deal with displaced trawl fishermen while keeping the number of new trap fishermen to a level that will have minimal impact on the existing trap fishery. The Department also received negative input from both tiers of existing trappers, trawl fishermen and the Commission that they do not want to create another group of “second class citizens”. If the Commission wishes to consider any of these options it may direct the Department to include them, but at this time the Department is not recommending the Commission consider any Tier 4 options.

Consideration of “Grandfather Clause”: A number of fishermen that have historically trawled for spot prawn, but who have not been active since the mid 1990s or earlier, have inquired about what is known as the “grandfather clause” (Fish and Game Code Section 8101). This term refers to a provision of law that allows a fisherman, who has held a California commercial fishing license for 20 years and participated for one of those years for which a restricted access program is being developed, to potentially qualify for a permit in the initial year of the program. The initial year of the trap restricted access program (April 1, 2002 to March 31, 2003) has passed. In addition, the spot prawn trawl fishery has been eliminated and is not becoming a restricted access fishery. Through this conversion program, the Department would be adding additional permits to an existing restricted access program, rather than creating a new program.

There is no legal obligation on the part of either the Department or the Commission to make any accommodation for the displaced trawlers under the grandfather clause. The direction from the Commission was to transition displaced trawlers into the existing restricted access trap fishery. Since minimizing economic impacts was the Commission's primary concern, this relief is directed at those most impacted by the closure, i.e. those trawlers who were major participants in the spot prawn fishery. If a fisherman was that active, then

there would be no need for him to rely on the grandfather clause to enter the restricted access trap fishery.

Restricted access fisheries are typically distinguished by species or gear; fishermen receiving permits in the conversion program would not be taking a different spot prawn species or using a different spot prawn trap, so the fishery in question is in fact the same restricted access fishery that currently exists.

Exclusive fishing zones: One option was suggested which would have restricted Tier 3 fishermen to the area north of a line due west from Pigeon Point in San Mateo County to the Oregon border. This was considered unreasonable in that the overwhelming majority of spot prawn landings were made south of this line. There are 65 10X10 NM DFG fishing blocks that have been historically important to the spot prawn trawl fleet; only 11 of these are north of Pigeon Point. There are no fishing blocks north of Pigeon Point which have been important historically to the spot prawn trap fishery.

Regional management has been recommended as one way to potentially mitigate for expected crowding and gear conflict on the fishing grounds. However, if the Commission selects a number of permits that does not result in excessive crowding to a degree that mitigation is necessary, there is no need to consider such regional management measures which are not resource-driven. Such regulations would also come with added burdens to Department enforcement staff, licensing and regulatory staff, and also would be burdensome to both current and future trap fishery participants. If the Commission wishes to consider areas of exclusive use for either Tier 1 or 3, they may direct the Department to include them. At this time, the Department is not recommending the Commission consider exclusive fishing zones for any trap fishery tier.

Establishment of Regional Permits: In discussions with fishery representatives, most believed that regional permits, in which, for example, a vessel would choose to fish in either northern or southern California but could not fish throughout the state, were not desirable. The Southern California Trawlers Association recommended that the Department establish a southern spot prawn management region south of Point Arguello, and that only boats berthed in the ports of Santa Barbara, Ventura, Port Hueneme, or Channel Islands Harbor be allowed to fish in that zone. The Department believes that this would discriminate against boat owners based out of the area who have fished in southern California in the past. As a result, the consideration of regional permits as an option was rejected.

Permit transferability: One option proposed would have made Tier 3 permits non-transferable. The Department believes that this would unfairly penalize Tier 3 permit holders and rejected this option.

The existing trap fishermen proposed that in addition to the three-year waiting period, that Tier 3 permits should have a landing requirement for transferability in

order to prevent new permit holders from holding onto the permit just to sell it. The Department rejected this requirement because often when a landing requirement is associated with permit renewal or transferability, it results in unnecessary fishing simply to meet the requirement.

At their scoping sessions the Department heard suggestions to allow transferability of both Tier 1 and Tier 3 permits immediately, or on April 1, 2005. This option would likely decrease the transfer price of Tier 1 permits if it were allowed, and is not equitable considering that Tier 1 permittees have already completed two of the three-year waiting period for permit transferability.

Another option considered was to require a minimum of 60,000 pounds landed in a 4-year period in order for a Tier 3 permit to be transferable. The Department believes that this would unfairly penalize Tier 3 permit holders and rejected this option. If these same standards were applied to the Tier 1 fishermen, more than half of them would not meet this standard.

Another option considered and rejected was to allow the sale of Tier 1 and 3 permits to any individual or organization who wants to retire the permit. This would not be practical because the current restricted access trap fishery is vessel-based and requires any permit be transferred to a vessel owner.

Tier 2 permit transferability: An option was considered, and subsequently rejected, to convert Tier 2 permits to transferable permits. The initial basis for establishing Tier 2 permits was to accommodate those who either had not fished for spot prawns on a regular basis in the recent past or who had made relatively small or infrequent landings during that time. These permits are not transferable to discourage the potential increase in fishing effort which could jeopardize the sustainability of the fishery. In addition, when the capacity goal was established for Tier 1 permits, it was believed that if all Tier 1 permits were active, the estimated average annual harvest of spot prawns could be realized even in the absence of any Tier 2 permits.

#### Change in Fishing Season for Offshore Waters of Southern California:

A proposal was made by fishery representatives to change the closed season in waters greater than 70 miles from the mainland shore and south of a line drawn due west from Point Arguello from November 1 through January 31 (present regulations) to May 1 through July 31, similar to the closed season north of Point Arguello. While this action might enable spot prawn trapping effort to diffuse over a greater area and reduce potential gear conflicts, the Department had concern about opening an area during the peak egg-bearing season for spot prawns. The November-January closure in the southern California trap fishery was implemented to protect egg-bearing females. The Commission implemented a split season closure north of Point Arguello in order to allow for a year-round market of spot prawns and prevent a major gear conflict in the Monterey area between salmon trollers and spot prawn trappers in the months of May through

July. As a result, the Department is not recommending the Commission consider any changes that would allow additional harvest during peak egg-bearing seasons.

Another option considered and rejected was to have a uniform closed season of November 1 to January 31 throughout the state. This would protect the resource during the peak egg-bearing season and could have some benefit in preventing effort shifts during regional season closures. However, it would eliminate the present year-round market for spot prawns. There is a strong market for this resource during the late fall/early winter holiday period. The Department considered the economic consequences of this action versus the potential biological risk to the resource and concluded that it was acceptable to allow some level of harvest (approximating one third of annual trap landings) north of Point Arguello during the peak egg-bearing season for spot prawns.

#### Trap Limit Options

Several options were considered and rejected by the Department. Trap limits are not germane to the conversion program but instead involve existing regulations which are allocation-based rather than resource-based. Both trap and trawl fishermen believe that restricting Tier 3 permits to less than 500 traps would not be economically viable. Since Tier 3 and Tier 1 will be on equal footing in regard to other fishery provisions, there is no need to consider additional variations on trap limits at this time. Effort caps or reductions through implementation of new trap limits may be something to consider if there is a concern with excessive trap gear once the number of participants is settled.

#### (b) No Change Alternative:

If additional restricted access spot prawn trap vessel permits are not offered to spot prawn trawl fishermen, the economic hardship incurred by these individuals from the spot prawn trawl fishery closure will continue. During the first 12 months of the restricted access spot prawn trap fishery (April 2002-March 2003), total statewide landings were 180,000 pounds, less than half of the average annual statewide total of 392,000 pounds for trap and trawl combined during 1990 to 2001. Since it appears that the resource can continue to provide an annual average harvest significantly greater than 180,000 pounds without known harmful biological impact, it is reasonable for the Commission to consider ways to offset some of the impact of the trawl closure by allowing some additional trap fishery catch and effort.

#### (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 would allow a limited number of trawl vessels to convert to trap gear. Future trap fishing opportunities would be offered to vessel owners who qualify for issuance of a Tier 3 permit, and therefore would provide a future economic benefit for both these vessels and the fish buyers they would supply. Alternatively, depending on the number of new trap vessels allowed in the fishery, the current Tier 1 trap fishery potentially may suffer negative economic consequences as the result of increased competition on the fishing grounds and in the marketplace.

Conversion of trawl vessels to trap vessels could have a negative effect on the existing trap fishery participants, who are also considered individual businesses. If historic trawling grounds do not become productive new trapping grounds, and there is gear congestion within the historic trapping areas due to the addition of Tier 3 trap vessel permittees, current trap permittees could experience some unquantifiable loss of income. Current Tier 1 trap permits, which may be sold beginning April 1, 2005, may also lose some market value as the total number of trap permits increases.

Every spot prawn buyer is considered a business. Any transfer of market share, or competition, between the existing trap fishermen and newly converted fishermen would not result in a loss of business or the ability of California businesses to compete with businesses in other states. In fact, the buyers would likely benefit if more spot prawns were harvested and available for purchase.

Local economies and port communities to the north of Monterey County may benefit from spot prawn fishing activities by newly converted trawl fishermen utilizing traps in what were historically trawl grounds for prawns should trap fishermen successfully attempt to utilize these currently unfished areas. Trap fishermen typically land nearly all their spot prawn (99 percent by value) in coastal ports south of Santa Cruz County. Department landings data from the years 2001 and 2002 indicate that less

than 1 percent (by value) of trap caught spot prawn are landed either in Santa Cruz County or to the north. Conversely, spot prawn trawl fishermen, in the years 2001 and 2002, landed over 32 percent (by value) of their prawns in ports located in Santa Cruz County and to the north. In the years 2001 and 2002, the prawn trawl landings in the coastal counties of Santa Cruz north to the Oregon border represented as much as \$864,000 in total aggregate economic output demand. Of this total aggregate output demand, approximately 32 percent is spent locally for fuel, repairs, ice, bait, and various consumables in the port communities.

- (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. However, depending on which options are ultimately chosen, there may be incremental fees levied on fishermen converting to prawn trap fishing. Tier 3 permit fees may take the form of trap permit fees (\$250-1000) and in some cases permit transfer fees (\$200). New Tier 3 permittees will have to invest in traps and associated rigging, which could run \$35 to \$75 per trap, with no guarantee that converting to a new gear type will be profitable or produce an income equivalent to what they realized in past years using trawl gear.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Other Non discretionary 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

In February 2003, the Fish and Game Commission adopted a prohibition on the use of trawl gear for the commercial take of spot prawn, *Pandalus platyceros*, (OAL File #03-0314-03s) resulting in displacement and economic impact to approximately 45 commercial trawl vessels which had previously participated in the fishery annually. The Commission directed the Department to develop options for a conversion program that would add a limited number of additional permits to the existing spot prawn restricted access trap fishery. These permits would be available to owners of spot prawn trawl vessels who met minimum vessel-based landing requirements.

Current regulations establish the restricted access spot prawn trap fishery program with Tier 1 and Tier 2 permits, which became effective April 1, 2002. For the 2003-2004 fishing season, seventeen Tier 1 permits and five Tier 2 permits have been issued by the Department. Tier 3 trawl conversion permits are proposed for issuance that would regulate trap fishing activity subject to the same conditions that apply to the existing Tier 1 spot prawn trap vessel permits. The Department proposes that the Commission consider issuing between 1 and 17 Tier 3 permits, and further proposes that the Tier 1 and Tier 3 combined capacity goal be set at 17 permits; the same as the current 17-vessel capacity goal in place for only Tier 1 vessels.

When selecting the optimum number of conversion permits to issue, it will be critical for the Commission to balance the potential harm to the existing trap fishery participants who would face increased competition against the economic loss already suffered by vessel owners now precluded from taking spot prawn utilizing trawl gear, many of whom relied on the fishery for nearly 100 percent of their income.

The goal of the conversion program is to provide continued access to the spot prawn resource for those fishermen who most relied on the spot prawn trawl fishery prior to its closure in 2003. The Department has developed a range of initial qualifying criteria that allows the Commission to select from traditional minimum landings levels or a point system, as described below.

The Department proposes the Commission consider limiting the trawl fishery catch history to a qualifying window of 1994 – 2001, although the Commission may select a window period that starts any time between 1990 and 2001, and ends any time between 1999 and 2002. This wide range of dates is provided by the Department based on comments received from interested or affected individuals or groups.

### Tier 3 Initial Issuance Criteria Options

Since trawl landings of spot prawn are generally larger than those made by trap, a range of volumes that was much larger than those used in the qualifying criteria for Tier 1 trap permits is being proposed. The Commission may select qualifying criteria that would include a minimum catch level over many years in total (between 1,000 to 150,000 pounds), or a minimum annual catch level (1,000 to 20,000 pounds) in each

year or in each of a number years, participation (between 1 and 100 landings) in each year or in each of a number years, or the number of landings (1-500) over one or more years or over a number of years.

Another qualifying option factors the purchase of the 2000-2001 spot prawn trawl observer permit into the qualifying criteria. This option, in combination with others, would recognize the voluntary participation of these vessel owners in the management of the fishery.

To demonstrate recent participation in the fishery, an option to have at least one spot prawn landing in either 2000 and/or 2001 is provided for use in conjunction with a window period that does not encompass those years

### Prawn Point Option

In order to preserve diversity in the composition of the trap fishery participants and make the issuance of Tier 3 permits a more equitable process, the Department also created an option utilizing a prawn point system to determine qualification criteria for issuance of a Tier 3 permit. This point system could be used to qualify for initial permit issuance or to qualify vessels for a lottery that may be held for some or all of the converted permits available. As proposed, prawn points would be awarded to a vessel based on three factors:

- One hundred prawn points would be given for each calendar year the vessel made spot prawn landings with trawl gear during the qualifying period;
- One prawn point would be given for every 200-2000 pounds of spot prawn the vessel landed with trawl gear during the qualifying period; and
- One prawn point would be given for each landing of spot prawn a vessel made with trawl gear during the qualifying period.

The Commission may select from a range of 600-1600 prawn points to qualify for a permit and/or a lottery.

### Lottery Option

Whether traditional landings criteria or the prawn point system is selected for initial permit issuance, the line that separates the qualifiers from the non-qualifiers is difficult to draw from a policy standpoint. If the Commission believes, for example, that 11 individuals are more or less equally deserving of a conversion permit, yet they wish to issue fewer than 11 permits, the Commission may elect to have a lottery for some or all of the permits. If the proposed lottery is adopted, the Department will notify vessel owners who meet the eligibility requirements.

Regardless of what initial issuance criteria are selected, some vessel owners who landed spot prawns in the past will not qualify for a permit. The Department is trying to accommodate those vessel owners who relied most heavily on the spot prawn trawl

fishery in terms of factors described above, while at the same time attempting to avoid fishery overcapitalization and gear conflicts in available trapping grounds.

### Transferability of Tier 3 Permits

A three-year waiting period from the initial issuance of Tier 1 permits is required before they can be transferred, with no minimum landing requirements to qualify for transfer. Tier 1 permits may be transferred beginning on April 1, 2005. To be consistent with Tier 1, a three-year waiting period is proposed for the transfer of Tier 3 permits, also with no minimum landings requirement, making them fully transferable on October 1, 2007.

Making Tier 3 permits transferable at the same time as the Tier 1 permits would result in inequity to Tier 1 holders who have had to wait for three years to sell their permits. Moreover, since very few Tier 1 permits are likely to come available on the market after April 1, 2005, their value is likely to be high. If Tier 3 permits were also transferable beginning in 2005, more permits would be on the market, the value of the permits would decrease, and they would most likely be sold to individuals interested in immediately participating in the fishery at high effort levels.

### Fees and Filing Deadlines

The Department proposes that Tier 3 permits have a permit fee of (\$250.00-\$1000.00), late fees of \$50.00, and a \$200.00 transfer fee. Although Tier 1 and 2 permittees currently have a \$250.00 permit fee, the price is not commensurate with the value of the resource and the amount of Department time spent managing this small but valuable fishery. Application deadlines for initial issuance of Tier 3 permits, including deadlines for late fees, and for appealing denied permits, are proposed to be equivalent to the time increments required for Tier 1 permits. All other administrative aspects of the Tier permit structure are proposed to be the same as those of Tier 1 permits.

### Vessel Owner on Board Permitted Vessel

Current regulations require the owner of the permitted spot prawn trap vessel to be on board when spot prawns are being taken, except that one additional operator may be designated during a license year. The Tier 1 trap permittees have proposed amendment to this regulation to allow a replacement operator only in the case of a medical/hardship case for both Tier 1 and 3 permittees. They believe that hired operators have no stake in the fishery and frequently create a disorderly fishery because they lack experience setting trap strings and have little regard for the trap gear already on the grounds. However, the trawl fishermen believe that there should be no restriction on replacement operators. The Commission may choose the option of allowing either one replacement operator or any number of replacement operators. In addition the Commission may choose the option of allowing for a replacement operator or operators only in the case of a medical or hardship reason.

### Reorganization and Clarification of Existing Regulatory Language

Several non-substantive changes are proposed to the existing regulatory language of 180.1 and 180.3 for clarity, consistency and ease of enforcement.

Section 180.1 on Spot Prawn Fishing defines restrictions on traps used in the fishery. In subsection (a) the reference to the closed season in 2000 is proposed for removal since the effective dates have passed. Subsection (a)(1) specifies that traps may be set and baited beginning at 0600 hours on January 31. This is the last day of the closed season in southern California. Clarifying language was added to specify that the January 31 date applies only to waters south of a line drawn due west from Point Arguello, and traps used north of the Point Arguello line may be set and baited beginning at 0600 hours on July 31, the last day of the closed season in northern California.

Clarifying language is proposed to be added to (a)(2) to specify that traps must be out of the water prior to the beginning of the closed season of May through July north of Point Arguello as is already required during the closed season of November through January south of Point Arguello. Subsection (c) (Trap Limits) would clarify and make specific the trap limits for each of the three permit tiers. The Tier 2 trap limit previously contained in Section 180.3 (b)(2)(C) is proposed to be moved to subsection 180.1(c)(2). Subsection (e), which dealt with an observer fee requirement for the specific period of July 14, 2000 to March 31, 2001, is proposed for removal since effective dates have expired.

Section 180.3 defines the conditions, qualifying criteria, and administrative details of a two-tiered restricted access spot prawn trap fishery. The Section is proposed to be modified so that existing regulations governing the Tier 1 fishery also apply to the Tier 3 fishery. This requires reorganization of existing regulatory text defining permit conditions, initial issuance criteria and transferability provisions, resulting in the addition of new subsection headings throughout for clarity. Subsection (b) will be retitled and a classification for Tier 3 or conversion permits will be added. Subsection (c) becomes specific to the initial issuance criteria for each type of permit. Subsection (d) now addresses a capacity goal of 17 permits for Tiers 1 and 3 combined.

Existing provisions for mechanisms dealing with overcapacity and under capacity situations are proposed for elimination since they only involved the upgrade of a Tier 2 permit, or the 2 for 1 sales of a Tier 1 permit. Given the number of permits issued for the 2004-2005 fishing season, and with the future addition of Tier 3 permits, neither mechanism for transferability is possible given the future capacity of the fishery following implementation of the conversion program.

Proposed subsection (e) now specifies the initial issuance application deadlines for all three types of permits. The proposed application for Tier 3 permits is incorporated by number and reference. Subsection (g) addresses permit renewal for all three types of permits and again incorporates the applications by number and reference. Other non-substantive changes were made in the subsection for clarification.

In subsection (l) the change of ownership of a spot prawn trap vessel permit was addressed for Tier 3 with the same requirements as for Tier 1, although different dates shall apply if adopted. Regarding change of ownership of a spot prawn trap vessel permit; existing regulatory language was clarified so that in the event of death of a transferable permit holder, the permit may be transferred to the decedent's estate, rather than only to an heir. Proposed regulations would still require that the application for transfer be received by the Department within one year of the decedent's death. In subsection (m) appeal provisions for initial issuance of Tier 3 are outlined and parallel Tier 1 only with different deadlines. In subsection (n) dealing with fees, Tier 3 was added with fees identical to those of Tier 1 with the exception of the permit fee where a range is provided.