

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

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Section(s) 1050, 9054 and 9055 of the Fish and Game Code and to implement, interpret or make specific Section(s) 1050, 7850, 7852.2, 7857, 9054 and 9055 of said Code, proposes to amend Section 120.7, Title 14, California Code of Regulations, relating to Urchin Fishing Days, Permit Renewals, Lottery Provisions and Logbooks.

Informative Digest/Policy Statement Overview

The proposed regulatory action would result in the following amendments:

1. Change urchin fishing days of the week as requested by fishermen and processors.

Current regulations of subsection 120.7(l), Title 14, CCR, specify the open fishing days each month for the commercial harvest of sea urchins. Depending on the month, the number of open fishing days ranges between two days per week and seven days per week.

Sea urchin fishery representatives recommend that the Commission change the authorized fishing days to ensure a more reliable supply of urchins to customers year round, thereby improving the economic sustainability of the fishery. The proposed regulatory changes would add a total of 42 open days to each fishing season, and would authorize fishing seven days per week from November through May, and four days per week from June through October. The open days for June through October would be Monday, Tuesday, Wednesday and Thursday.

In previous regulatory actions modifying urchin fishing days, the Department has noted that limiting the number of days is a management tool that is designed to curtail fishing effort, which may help maintain a sustainable urchin resource. Industry representatives describe that in today's sea urchin fishery, weather and limited market demand successfully work to control fishing effort, and too many closed fishing days results in an unstable supply of urchin.

2. Amend existing urchin fishing regulations to conform to new language in Section 7852.2 of the Fish and Game Code, regarding commercial fishing permit renewal late fees, late fee deadlines, and appeal provisions, as established by AB 1144 (Ch. 279, Stats. 2007).

New language in Section 7852.2 of the Fish and Game Code, effective April 1, 2008, provides as follows:

Notwithstanding any other provision of law, a commercial fishing license, stamp, permit, or other entitlement for which there is a renewal deadline shall not be renewed after that deadline, except as follows:

(a) In addition to the base fee for the license, stamp, permit, or other entitlement, the department shall assess a late fee for any renewal the application for which is received after the deadline, according to the following schedule:

- (1) One to 30 days after the deadline, a fee of one hundred twenty-five dollars (\$125).*
- (2) Thirty-one to 60 days after the deadline, a fee of two hundred fifty dollars (\$250).*
- (3) Sixty-one days or more after the deadline, a fee of five hundred dollars (\$500).*

(b) The department shall not waive the applicable late fee. The late fees specified in this section are applicable beginning in the 2008 license year, and shall be adjusted annually thereafter pursuant to Section 713.

(c) The department shall deny any application for renewal received after March 31 of the permit year following the year in which the applicant last held a valid permit for that fishery.

(d) An applicant who is denied renewal of a late application may submit a written appeal for renewal to the commission within 60 days of the date of the department's denial. The commission, upon consideration of the appeal, may grant renewal. If the commission grants renewal, it shall assess the applicable late fee pursuant to subdivision (a).

Existing regulations in subsection 120.7(c), Title 14, CCR establish commercial urchin fishing permit renewal provisions. The renewal deadline is presently June 30, and applications received after June 30 and before August 1 are assessed a \$50 late fee. Beyond July 31, there are no permit renewal provisions and applications postmarked after this date is not considered.

This regulatory language now conflicts with the new statutory provisions of Section 7852.2, which now prevails on matters surrounding renewal late fees and late payment penalty schedules for all commercial fishing permits. Therefore, amendment of the antiquated urchin permit regulations is needed for clarity and consistency, and to allow the sliding late fee schedule established by statute to be implemented as the Legislature intended for all fisheries.

Additionally, the new statute defines late permit renewal appeal provisions which now also apply to urchin fishing permits. Amendments to the regulatory language in subsection 120.7(g) is needed for clarity and consistency on this subject as well.

Subdivision 1050(c) of the Fish and Game Code gives authority to the Commission to prescribe the terms and conditions under which commercial fishing permits shall be issued by the Department. The proposed amendments to subsections 120.7(c) and 120.7(g) of Title 14 would be promulgated under this authority, and would result in striking the old urchin permit renewal and appeal provisions and replacing them with the statement that late fees, late fee deadlines, and late renewal appeal provisions are specified in Fish and Game Code Section 7852.2. The changes will also aid the Department's License and Revenue Branch staff and urchin permittees who hold multiple commercial fishing permits, as streamlining the permit renewal process will allow for simpler, more efficient and consistent procedures for all fishermen who hold limited entry or moratorium permits.

3. Change the urchin permit renewal deadline to April 30 each year effective in 2009; consistent with the date for other moratorium and restricted access permit programs.

The proposed regulatory action would result in changing the urchin permit renewal deadline to April 30, beginning in 2009, for consistency with most other commercial fishing moratorium and restricted access permit renewal deadlines. The change is also needed because the present renewal deadline has created difficulties for the urchin lottery program, which is used to issue new urchin permits each year to urchin crewmembers under specified conditions.

The current language of subsection 120.7(c) specifies that the permit renewal deadline is June 30th, and through the next month a permittee may renew if the application is accompanied with payment of a \$50 late fee. Renewal applications are not accepted with postmarks dated after July 31. The number of new permits that are to be issued in the lottery is determined prior to

August 1 each year.

Because the number of new permits issued in the lottery is calculated based upon the number of permits renewed in the current season compared with the number of permits issued for the prior season, an earlier renewal deadline in April, rather than June, will help to ensure that the calculation of the number of permits to issue in the lottery is accurate and based on complete information, as there will be more time between the renewal deadline and the time the number of permits to issue in the lottery is determined.

Urchin industry representatives support an earlier renewal deadline of April 30 and also recommend continuing with the existing lottery timelines, anticipating that most permittees will continue to renew by the deadline, thereby avoiding late renewal fees which can reach \$500 under the new statute. However, one result of the proposed regulatory and statutory changes will be that the number of permits issued in the lottery each year will continue to be determined prior to August 1, seven months before the final renewal opportunity expires. Consequently, if urchin permittees delay renewal of the permit until after the lottery is conducted, more new urchin permits could be issued in the lottery each year than would be issued under present rules.

4. Amend the form, regulations, and instructions for urchin fishing records (logbooks).

Subsection 120.7(m) specifies that any person who operates a vessel used for sea urchin fishing must prepare a daily record of such activity on a dive logbook and provide it to the Department on or before the 10th day of each month. The regulations would be changed so that all sea urchin permittees, instead of the vessel operator, would be required to complete dive records. This would mean that in the future, permittees diving off of a vessel operated by another person would be required to independently fill and return their own logbook documenting their personal diving activity.

Additionally, the current dive logbook form, incorporated by reference and in use since 1999, would be updated slightly for the next printing, and would include the following amendments:

a) Fishery block charts, the grid system used by all fishermen to record the general location of their commercial fishing activity off California, were modified slightly to improve precision of the block data.

b) Both a landmark name and the latitude/longitude of the site where each day's fishing activity occurs would be required. The existing logbook form allows the diver to select which type of location information to provide. The change is needed because the Department has found that having both types of location data is often necessary to precisely determine where fishing activity occurred.

c) Changes to the format of the form are proposed regarding how the pounds of urchin and incidental catches shall be recorded.

d) The average depth field would be eliminated, although the depth range fished would continue to be required.

5. Other changes to update information, correct typographic errors, and for clarity/consistency

The address of License and Revenue Branch in the present regulations is incorrect. Changes are proposed to require that payments and forms be made to the License and Revenue Branch office in Sacramento. Other minor changes are proposed to correct typographic errors and for clarity and consistency.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Best Western Stockton Inn, Fremont Room, 4219 East Waterloo Road, Stockton, California, on Friday, March 7, 2008 at 8:30 a.m., or as soon thereafter as the matter may be heard.

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 at the University of California Davis, Bodega Bay Marine Laboratory- Lecture Hall, 2099 Westside Road, Bodega Bay, California, on Friday, April 11, 2008, 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 March 28, 2008, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. **Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on April 8, 2008.** All comments must be received no later than April 11, 2008, at the hearing in Bodega Bay, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

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, John Carlson, Jr., 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 John Carlson, Jr., or Jon K. Fischer at the preceding address or phone number. **Ms. Marci Yaremko, Department of Fish and Game, phone (805) 568-1220, 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 the 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:

No anticipated adverse economic impacts. According to urchin fishing industry representatives, changes to the open fishing days will result in some unquantifiable but positive impact to permittees, crewmembers and urchin processors in terms of future sales.

- (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 Commission 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.

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

John Carlson, Jr.
Executive Director

Dated: February 13, 2008

