

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Sections 125 & 125.1
Title 14, California Code of Regulations
Re: Commercial Rock Crab Permits

- I. Date of Initial Statement of Reasons: March 16, 2010
- II. Dates and Locations of Scheduled Hearings:
- (a) Notice Hearing: Date: April 8, 2010
Location: Monterey, CA
- (b) Discussion and Adoption Hearing: Date: June 24, 2010
Location: Folsom, CA
- III. Description of Regulatory Action:
- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:
- 1. Remove the moratorium on southern rock crab trap permits and allow a limited number of permits to be transferred each year.**
- The existing regulations of subsection 125(e)(2)(A) specify that only persons who held a valid southern rock crab trap permit in the immediately preceding year are eligible to obtain a permit for the following permit year. This has resulted in a permit moratorium that prohibits any new entrants into the fishery. The proposed regulation would allow new individuals to enter the fishery by obtaining a transferable permit from an existing permit holder.
- In 2004, the Commission adopted a permitting system for the northern and southern rock crab trap fisheries to respond to concerns regarding increased landings and overcapitalization of the fishery. Individuals who were initially issued a southern rock crab trap permit are required to renew them every year or they are lost and there are no mechanisms in place for new individuals to enter the fishery. The Department did not want to develop a restricted access fishery without statewide industry participation and a full analysis of capacity goal and existing data. However, a control date of June 1, 2003 was established for the purpose of considering a future restricted access fishery.

In 2005, the first year of the permit moratorium, 143 of the 183 individuals who were qualified to obtain a permit under the new regulations purchased a permit. This number has dropped approximately 12.5% to 125 active permits in 2009. Without a mechanism for new members to enter the fishery, the number of participants will eventually decline, through retirement and/or attrition, until the fishery ceases to exist.

Number of Southern Rock Crab Trap Permits 2005 - 2009

Year	Southern Rock Crab Trap Permits
2005	143
2006	141
2007	134
2008	130
2009	125

The lack of a mechanism for entry into the fishery was brought to the Commission's attention in 2007 by a fisherman who had purchased a nearshore trap permit and was unable to fish for rock crab for bait because he was not able to obtain a southern rock crab trap permit. This issue was again brought to the Commission in 2008 by a fisherman asking for a mechanism for a son to tend rock crab traps for his ailing father, a southern rock crab trap permit holder. The Marine Resources Committee (MRC) of the Commission heard this item at its meeting on July 21, 2009 in Monterey, CA. In conjunction with stakeholders, DFG Marine Region staff and DFG Law Enforcement staff, the MRC recommended the formation of an ad-hoc committee to develop recommendations for entry into the fishery. The Commission's Marine Advisor convened a meeting of the ad-hoc committee on August 28, 2009, in Ventura, CA to discuss options and develop recommendations. Notice of the ad-hoc committee meeting was sent to all southern rock crab trap permit holders, and the meeting was attended by 15 permit holders (many representing others in their home port), three individuals wishing to obtain a permit, and DFG Law Enforcement personnel.

The discussion of the ad-hoc committee focused on balancing the need to allow new participants to enter the fishery with concerns over possible increased effort caused by the transfer of latent permits. The committee also highlighted the need to generate more data on the fishery to help inform future management decisions.

Although there is still insufficient information to establish a restricted access fishery, allowing a limited number of permits to be transferred each year is not expected to put undue pressure on the resource. Annual monitoring of catch levels and distribution of effort will allow for the early detection of increased effort due to the transfer of latent permits.

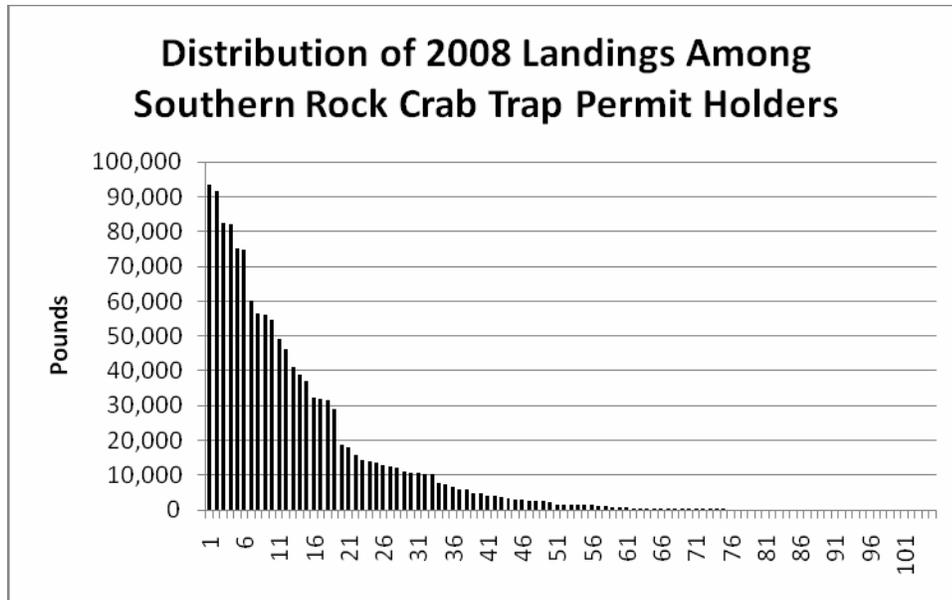
Qualifications for Transferable Permits

To qualify for a southern rock crab trap permit, the Commission determined that a fisherman had to land a minimum of 500 pounds of rock crab using trap gear between January 1, 1998 and December 31, 2003 at ports located within the southern permit area. This resulted in the qualification of 183 individuals, 143 of whom initially purchased a southern rock crab trap permit.

Like most fisheries, a few individuals account for the majority of landings in the southern rock crab trap fishery. Over the four year period from 2005 – 2008, 21 individuals landed approximately 75% of the total catch. There are also a number of latent permits that are held by individuals who do not regularly make landings. In 2008, 75 out of the 130 (approximately 58%) southern rock crab trap permit holders recorded landings. Over the 4-year period (2005-2008), 105 of the 143 permit holders made landings.

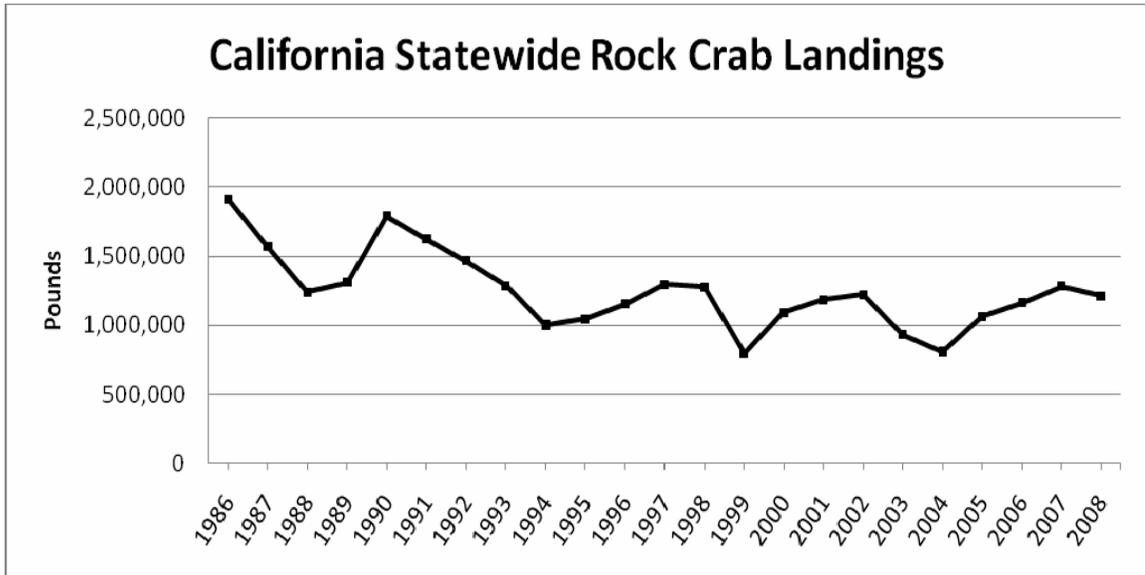
Number of Southern Rock Crab Trap Permit Holders That Landed a Given Percentage of the Total Catch

% of landings	2005	2006	2007	2008	Total 2005- 2008
25%	3	3	3	4	4
50%	10	8	9	9	10
75%	22	17	18	17	21
100%	90	91	83	75	105



There are not log book requirements for this fishery, and no survey work has been done to determine the distribution of the three rock crab species harvested in the fishery. Therefore, it is not possible to determine, from a biological standpoint, what an ideal fleet size or capacity goal should be. However, aggregated catch data for the three species of rock crabs indicates that catch

rates have generally been consistent for the last 20 years indicating that the current amount of effort is not likely to be negatively impacting the resource. The southern rock crab trap fishery accounted for over 95% of the statewide catch between 2005 and 2008.



Some members of the ad-hoc committee expressed concern that the transfer of latent permits to more active participants would put additional pressure on the resource. Others felt that the resource could sustain significantly more effort, but did not have any empirical data to support their assertion. The committee agreed, however, that a higher number of transferable permits would be acceptable as long as there were other mechanisms to restrict the rate of new entrants into the fishery and monitor their effort.

Option 1: The proposed regulations would allow all current 125 existing southern rock crab trap permits that have not been suspended or revoked to become transferable.

Option 2: The proposed regulations would issue transferable permits to existing southern rock crab trap permit holders that have not been suspended or revoked that have landed a minimum of [1 – 5,000] pounds of rock crab during any calendar year from 2005 through 2008 using trap gear, inclusive, as documented by Department landing receipts submitted in an individual’s name and commercial fishing license identification number with trap gear identified.

Limited Permit Transfers

To alleviate the concerns surrounding the impact of the transfer of latent permits to more active participants, the proposed regulation would limit the number of transfers processed by the department each license year (April 1 – March 31) to [0-10] individuals. This would retard the rate of new entrants into the fishery, and

permit the early detection of significant shifts in catch levels or distribution of effort. The annual limit on permit transfers would not apply in the event of death of the permit holder.

Transfer Fees

It is proposed that a transfer fee of [\$200 - \$2000] be applied to all southern rock crab trap permit transfers. This would be in addition to the current fees for the southern rock crab trap permit, commercial fishing license, and trap permit. Permit transfer fees for other California commercial fisheries range from a low of \$50 for spot prawn trap vessel (new owner) to a high of \$1,500 for drift gill net (permit) and market squid brail upgrade.

Transfer Process

Applications to transfer permits are proposed to be in the form of a notarized letter from the existing permit holder, or the permit holders estate in the event that the permit holder is deceased, identifying the transferee and shall include the original transferable southern rock crab trap permit, a copy of the transferee's commercial fishing license and the nonrefundable permit transfer fee.

Applications are proposed to be submitted to the department's License and Revenue Branch, 1740 North Market Boulevard, Sacramento, CA 95834. It is proposed that applications will be processed in the order received. If on any given day the number of applications received is greater than the available number of transfers, the department shall conduct a manual drawing to determine which application(s) shall be processed. Applications that are not processed will be returned and may be resubmitted on or after the first day of the following permit year for consideration.

In the event of death of the southern rock crab trap permit holder, it is proposed that the estate of the permit holder may renew the permit if needed to keep it valid. It is proposed that the estate of a deceased transferable permit holder may transfer the permit not later than 1 year from the date of death listed on the death certificate.

2. Require species specific data on rock crabs to be recorded on landing receipts

The proposed regulations would require rock crabs to be identified to the species level on all landing receipts. Landing receipts currently have a field for each of the three species of rock crab: "red", "yellow" and "brown". The proposed regulations would require that the catch be recorded by species and not recorded under unspecified rock crab.

Whenever multiple species are harvested in a single fishery in unknown quantities there is a danger of serial depletion. That is, one species may be harvested at levels that are not sustainable, but the annual harvest remains

stable, or even increases, masking the decline of individual species. According to Department fish landing reports, an average of 80% of all rock crabs landed between 2005 and 2008 was “unspecified crab”. Collection of species specific data is a critical first step to filling the large data gaps that exist for this fishery. This proposed regulation would apply to all rock crab taken within state waters.

3. Allow any rock crab permittee to pull rock crab traps belonging to another permit holder in the event of illness or injury

The proposed regulation would allow any rock crab permittee to pull rock crab traps belonging to another rock crab trap permit holder in the event of illness or injury. This would be consistent with regulations in the lobster trap fishery (§122(l), Title 14, CCR) and would provide a mechanism for traps to be serviced pursuant to FGC § 9004 in the event of illness or injury to the owner of the traps. The permittee pulling someone else’s traps must have in their possession a letter from the traps’ owner authorizing this action.

Section 125(a)(1), Title 14, CCR, requires at least one rock crab trap permit holder be onboard a vessel at all times when taking, possessing aboard a vessel, using as bait, or landing rock crab using trap gear. This requirement is consistent with all trap fisheries managed by the California Fish and Game Commission (Commission) that are based on permits issued to individuals (as opposed to permits issued to vessels).

For fisheries managed under the general trap permit, the State allows for non-owners to pull another individual’s traps if they possess a valid general trap permit and written permission, in his or her possession, from the person who holds the identification number on the buoy (FGC § 9002(b)). Title 14 § 122(l) allows lobster traps and receivers to be pulled by another permittee with the owner’s authorization.

FGC § 9004 states “[e]very trap shall be raised, cleaned, serviced, and emptied at intervals, not to exceed 96 hours, weather conditions at sea permitting, and no trap shall be abandoned in the waters of the state.” Given the servicing requirement, and the regulatory allowances in the general trap and lobster fisheries for another permittee to pull someone else’s traps if they are unable to work, the same accommodation should be allowed in the rock crab trap fishery.

4. Require all rock crabs to be weighed and landed prior to being used as bait in finfish traps

Under current regulations (Section 125.1(d), Title 14, CCR), rock crabs may be used as bait in finfish traps. However, there is no mechanism to track the amount of rock crab used as bait. The proposed regulation would require that all rock crabs are brought ashore and recorded on a landing receipt before they can

be used as bait in finfish traps. The total pounds of rock crab to be used as bait from each landing will be required to be recorded in the "Note Pad" field on the landing receipt. Rock crabs used as bait in finfish traps will be required to be accompanied by a landing receipt demonstrating that the crab to be used as bait has been landed prior to being used as bait. The fisherman would also be required to keep copies of landing receipts documenting the catch of rock crabs that are used as bait on the fishing vessel for a minimum of 30 days from the date of landing as listed on the landing receipt.

During the development of the southern rock crab trap permit, it was stated that rock crabs are an important source of bait for nearshore trap fishermen who catch live sheephead. The Department believes that a significant amount of rock crabs are taken by nearshore trap fishermen and that there is currently no regulation that requires the fisherman to record the total number of pounds of rock crab used for bait. All trap fishermen that catch their own rock crab for bait south of Pt. Lopez must possess a valid southern rock crab trap permit. The proposed regulation would require individuals wishing to catch rock crab for use as bait to return to port, land the rock crab, complete a landing receipt pursuant to FGC §8047(a)(1), and then use the rock crab as bait on a subsequent trip. If desired, fishermen have the ability to issue a landing receipt to themselves pursuant to FGC Article 7 (commencing with section 8030) of Chapter 1.

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

Authority: Sections 1050 and 8282, Fish and Game Code.

Reference: Sections 1050, 7852.2, 7857, 8033, 8043, 8047, 8250.5, 8281, 8282, 8284, 9000, 9001, 9001.7, 9002, 9005, 9006, 9011, Fish and Game Code.

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

None

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

None were identified

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

- (1) Marine Resources Committee, July 21, 2009, Monterey, CA
- (2) Ad-hoc Committee, August 28, 2009, Ventura, CA
- (3) Marine Resources Committee, November 17, 2009, Santa Barbara, CA

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

A restricted access program with transferable permits was previously considered by the Department. The Department did not want to develop a restricted access fishery without statewide industry participation and full analysis of a capacity goal and existing data. Due to the paucity of biological data, lack of log books, and species specific landing data, a full analysis of a capacity goal is not possible at this time.

Another alternative to gain access into the fishery is to convert the fishery to open access. This is not desirable as it would likely result in a significant increase in effort, and possibly push the fishery to unsustainable levels. It is also unfair to the fishermen who did not originally qualify for a permit and have sold or given away their trap gear. It also creates ill will and a lack of trust between the department and the industry. A California fishery that was restricted has never been converted back to open access before. Restriction adds value to a permit, and has been shown to increase fishermen's sense of ownership and respect for the resource.

(b) No Change Alternative:

If the proposed regulation is not adopted for the southern rock crab trap fishery, there will continue to be a lack of a way for new members to enter the fishery as participants retire or shift focus to other fisheries. In addition, the lack of species specific landing data can mask the decline of individual species and can lead to serial depletion. Declines in population can be further masked by the use of rock crab as bait, which is anticipated to be a large volume, although no empirical data are available to ascertain these levels.

Maintaining the status quo will keep the rock crab trap fishery in an extremely data poor state and will lead to the continued decline in the number of participants in the southern rock crab trap 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 as 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 regulations to allow transferable permits would allow new members to enter the fishery. This is needed to maintain a viable southern rock crab trap fishery in California, resulting in a positive economic impact for participants and businesses.

(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 proposed regulation to allow transferable permits would allow new members to enter the fishery. This is needed to maintain a viable southern rock crab trap fishery in California, resulting in a positive economic impact for participants and businesses. Increased competition for the resource is possible but not likely since market demand primarily controls the amount of crab harvested.

The proposed regulations for species specific landing data and landing of rock crab used as bait have the potential to moderately reduce the efficiency of rock crab and nearshore trap fishermen in the short-term. In addition, Rock crab that are to be used as bait will be required to be landed which will incur a landing tax of \$0.0019 per pound pursuant to FGC § 8041 and 8051. It is anticipated, however, that the participants in

these fisheries will easily adapt to the proposed regulations with no significant economic impact.

- (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, Government Code:

None

- (h) Effect on Housing Costs:

None

Informative Digest/Policy Statement Overview

Under current regulations (Section 125, Title 14, CCR), only persons who held a valid southern rock crab trap permit during the immediately preceding permit year are eligible to obtain a permit for the following permit year. This has resulted in a permit moratorium that prohibits any new entrants into the fishery. The proposed regulation would allow new individuals to enter the fishery by obtaining a transferable permit from an existing permit holder. The proposed regulation would greatly increase the data available on the fishery by requiring rock crab landed to be separated out by species and for nearshore trap fishermen to land rock crab and record those landings on a landing receipt prior to using them as bait. Finally, the proposed regulations would add regulatory language specifically allowing a rock crab trap permit holder to remove the traps of another permit holder in the event of illness or injury to the traps' owner.

Option 1: The proposed regulations would allow all existing southern rock crab trap permits that have not been suspended or revoked to become transferable.

Option 2: The proposed regulations would issue transferable permits to existing southern rock crab trap permit holders that have not been suspended or revoked that have landed a minimum of [1 – 5,000] pounds of rock crab during any calendar year from 2005 through 2008 using trap gear, inclusive, as documented by Department landing receipts submitted in an individual's name and commercial fishing license identification number with trap gear identified.

To address the concerns surrounding the impact of providing permits to more active participants, the proposed regulations would limit the number of transfers processed by the department each license year (April 1 – March 31) to [0-10] individuals. This would retard the rate of new entrants into the fishery and permit the early detection of an increase in catch levels or a change in the distribution of effort among permittees. The annual limit on permit transfers would not apply in the event of death of the permit holder.

It is proposed that a transfer fee of [\$200 - \$2000] would be levied for the transfer of a southern rock crab trap permit.

Applications to transfer permits are proposed to be in the form of a notarized letter from the existing permit holder, or the estate of the permit holder in the event that the permit holder is deceased, identifying the transferee and shall include the original transferable southern rock crab trap permit, a copy of the transferee's commercial fishing license and the nonrefundable permit transfer fee. Applications are proposed to be submitted to the department's License and Revenue Branch, 1740 North Market Boulevard, Sacramento, CA 95834. It is proposed that applications will be processed in the order received. If on any given day the number of applications received is greater than the available number of transfers, the department shall conduct a manual drawing to determine which application(s) shall be processed. Applications that are not processed

will be returned and may be resubmitted on or after the first day of the following permit year for consideration.

In the event of death of the southern rock crab trap permit holder, it is proposed that the estate of the permit holder may renew the permit if needed to keep it valid. It is also proposed that the estate of a deceased transferable permit holder may transfer the permit not later than 1 year from the date of death listed on the death certificate.

The proposed regulations would require rock crabs to be identified at the species level: red, brown or yellow on all landing receipts. The use of "unspecified rock crab" would be prohibited.

Under current regulations (Section 125.1(d), Title 14, CCR), rock crabs may be used as bait in finfish traps. However, there is no mechanism to track the amount of rock crab used as bait. The proposed regulation would require that all rock crabs are brought ashore, landed and recorded on a landing receipt before they can be used as bait in finfish traps. The total pounds of rock crab to be used as bait from each landing will be required to be recorded in the "Note Pad" field on the landing receipt. Rock crabs used as bait in finfish traps will be required to be accompanied by a landing receipt demonstrating that the crab to be used as bait has been landed prior to being used as bait. The fisherman would also be required to keep copies of landing receipts documenting the catch of rock crabs that are used as bait on the fishing vessel for a minimum of 30 days from the date of landing as listed on the landing receipt.

Minor edits are also provided to better align the reference of permit fees and applications under a centralized Title 14 section being proposed by the Department's License and Revenue Branch.