

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Subsections (b), (e), (g), (m), and (n) of Section 150;
Subsections (d) and (j) of Section 150.02;
Subsections (c), (d) and (h) of Section 150.03; and
Subsection (b) of Section 705, Title 14, California Code of Regulations
Re: Nearshore Fishery Permit, Nearshore Fishery Permit Gear Endorsements,
and Deeper Nearshore Species Fishery Permit Transferability

- I. Date of Initial Statement of Reasons: April 3, 2017
- II. Date of Final Statement of Reasons: October 13, 2017
- III. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: June 22, 2017
Location: Smith River
 - (b) Discussion Hearing: Date: August 16, 2017
Location: Sacramento
 - (c) Adoption Hearing: Date: October 12, 2017
Location: Atascadero
- IV. Update:

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

At its October 12, 2017 meeting, the Fish and Game Commission (Commission) adopted amendments to state regulations for Nearshore Fishery Permits (NFP) and Deeper Nearshore Species Fishery Permits (DNSFP). The adopted regulations allow for permit transfers for both NFPs and DNSFPs on a one-for-one basis, and enacts the Commission's direction to increase the NFP permit transfer fee from \$500 to \$1,500 and establishes a DNSFP transfer fee of \$1,500 for the public notice range of \$1,000 to \$2,500.

Additionally, the Commission adopted regulations relative to NFPs, DNSFPs, and nearshore fishery gear endorsements that change the transfer paperwork from notarized letters to a notarized application, allow up to two years to transfer a permit in the event the permittee dies, and delay the permit transfer if there is a pending action against the permit holder that could affect the status of the permit. These additional changes are consistent with other restricted access programs

such as lobster and rock crab. Finally, the adopted regulations clarify that a NFP holder can hold only one NFP regardless of the management area.

V. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

See Attachment A.

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VII. Location of Department Files:

Department of Fish and Wildlife
1416 Ninth Street
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

An alternative would be to convert one or both nearshore fisheries 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 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.

Another alternative would be to limit the number of Deeper Nearshore Species Fishery Permit transfers annually. This is not desirable because it would be difficult to develop a system that would fairly address those that were not allowed to complete the transfer process because the number of transfers had been reached for the year. This could also cause the permit holder to lose the opportunity to sell his permit as the other party may not want to wait to try again the following year. Additionally, this would increase the permit transfer fee to cover the additional costs to manage a permit transfer lottery system.

(b) No Change Alternative:

If the proposed regulations are not adopted, it will continue to be very difficult for new members to enter the fishery as participants retire or shift focus to other fisheries. It will also be difficult for permittees to pass their permits along to family members or business partners. In addition, fishermen with only one of the permits will still have to discard fish for which they do not have a permit.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

IX. 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 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 because the proposed changes are not expected to reduce the number of fishermen active in the fishery, nor the number of trips or harvest quantities.

(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; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California because the proposed changes are not expected to reduce the number of fishermen active in the fishery, nor the number of trips or harvest

quantities.

The Commission does not anticipate any benefits to the health and welfare of California residents, worker safety, or the environment.

(c) Cost Impacts on a Representative Private Person or Business:

The Commission anticipates cost impact of \$1,500 per permit transfer 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:

The Department anticipates revenue in the range of \$4,200 - \$63,000 annually to recover the costs of administering one to fifteen for each nearshore and deeper nearshore permit transfers per year. The proposed action is not anticipated to affect any other State Agency or Federal Funding to the State.

(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

Updated Informative Digest/Policy Statement Overview

Under current regulations (Section 150), only persons with a Nearshore Fishery Permit are allowed to take nearshore species (cabezon; California scorpionfish; California sheephead; kelp and rock greenlings; and, black-and-yellow, China, gopher, grass and kelp rockfishes). Transfer of Nearshore Fishery Permits is allowed on a two-for-one basis with the new permittee purchasing two permits, agreeing to retire one permit and fish using the other. The number of permits has declined 35 percent in the past 13 years and it's become very difficult to find two permits for sale in the same regional management area. The proposed regulations would change permit transfers to one-for-one making it easier for new permittees to get into the fishery as well as current permittees to retire. Additionally, the proposed regulations would standardize the transfer paperwork by changing from notarized letters from permit holders to a notarized application provided by the Department. The following is a summary of the changes proposed for Sections 150:

- Clarify that Nearshore Fishery Permit holders can only have one permit, regardless of the management area, at any time (Subsection 150(b))
- Add a requirement that the estate of a non-transferable Nearshore Fishery Permit shall immediately surrender the permit to the Department (Subsection 150(e)(5))
- Revise permit transfers (Subsection 150(g)(1-7)):
 - Allow for permit transfers on a one-for-one basis,
 - Change the paperwork from notarized letters to a notarized application,
 - Allow the estate of a deceased permittee two years to transfer the permit,
 - Require that the estate temporarily relinquish the permit until the transfer can be made, and
 - Delay the transfer pending resolution of any criminal, civil and/or administrative action involving the current permittee.
- Change the process for appealing denial of a transfer from a two-step process to a one-step process (Subsection 150(m)(3)) whereby the person denied a transfer can appeal directly to the Commission within 60 calendar days of the Department's denial.

Under current regulations (Section 150.02), only persons who held a valid Deeper Nearshore Species Fishery Permit (for the take of black, blue, brown, calico, copper, olive, quillback and treefish rockfishes) 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 permit from an existing

permit holder. Additionally, the proposed regulations would require completion of a notarized transfer application. The following is a summary of the changes proposed for Section 150.02:

- Establish permit transfer provisions (Subsection 150.02(j)):
 - Establish that all Deeper Nearshore Species Fishery Permits are transferable,
 - Establish a notarized application for the permit transfer,
 - Allow the estate of a deceased permittee two years to transfer the permit,
 - Require that the estate temporarily relinquish the permit until the transfer can be made, and
 - Delay the transfer pending resolution of any criminal, civil and/or administrative action involving the current permittee.
- Establish a permit transfer fee as specified in Section 705 (Subsection 150.03(d))

Current regulations (Section 150.03) allow persons with a Nearshore Fishery Permit to use trap gear with a Nearshore Fishery Gear Endorsement, which is transferable on a one-for-one basis. The proposed regulations would change the permit transfer requirement from notarized letters from the permit holder to a notarized application provided by the Department. The following is a summary of the changes proposed for Sections 150.0:

- Move the subsection 150.03(c)(5) requirement that a non-transferable Nearshore Fishery Gear Endorsement become null and void upon the death of the individual to holds the permit and propose to add that the estate of a non-transferable Nearshore Fishery Gear Endorsement holder shall immediately surrender the permit to the Department to Subsection 150.03(d)(6)
- Revise permit transfers (Subsection 150.03(d)) to:
 - Change the paperwork from notarized letters to a notarized application,
 - Allow the estate of a deceased permittee two years to transfer the gear endorsement,
 - Require that the estate temporarily relinquish the gear endorsement until the transfer can be made, and
 - Delay the transfer pending resolution of any criminal, civil and/or administrative action involving the current permittee.
- Change the process for appealing denial of a transfer from a two-step process to a one-step process (Subsection 150.03(h)(3)) whereby the person denied a

transfer can appeal directly to the Commission within 60 calendar days of the Department's denial.

Current regulations (Section 705) establish a Nearshore Fishery Permit Transfer Fee of \$500. The proposed regulations would increase the permit transfer fee to a range of \$1,000 to \$2,500 and also establish a transfer fee in the range of \$1,000 to \$2,500 for the Deeper Nearshore Species Fishery Permit. The proposed regulations would also include reference to the proposed Nearshore Fishery Permit and Nearshore Fishery Trap Endorsement Transfer Application (DFW 1045) and the proposed Deeper Nearshore Species Fishery Permit Transfer Application (DFW 1048).

Additional minor changes are proposed to correct grammatical errors and remove section references to Title 14, CCR, to improve clarity and standardize regulatory format.

The proposed regulatory action will benefit fishermen, processors, and the State's economy by maintaining a healthy sustainable fishery, and ensuring future harvestable nearshore populations.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate the commercial take of nearshore species (Section 8587.1, Fish and Game Code). The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Commission has searched the California Code of Regulations and finds no other State agency regulations pertaining to the commercial take of nearshore fish stocks.

At its October 12, 2017 meeting, the Commission adopted the proposed regulations, described above, and permit transfer fees as described below:

- **The Commission adopted a \$1,500 permit transfer fee for Nearshore Fishery Permits from the noticed range of \$1,000 to \$2,500.**
- **The Commission adopted a \$1,500 permit transfer fee for Deeper Nearshore Species Fishery Permits from the noticed range of \$1,000 to \$2,500.**

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

Update:

Statute Inoperative:

Fish and Game Code Section 8588 was repealed on March 10, 2003, due to the adoption of regulations implementing a fishery management plan for nearshore

fish stocks. The statute is inoperative and has been removed from the Reference Section in Section 150.

Incorporate by Reference DFW 1045 (New 4/2017) and DFW 1048 (New 4/2017):

- (1) The forms are impractical to publish in the California Code of Regulations and easier to incorporate by reference.
- (2) The forms were published on our website and made available upon request directly from the agency.