

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

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. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: June 22, 2017
Location: Smith River

(b) Discussion Hearing: Date: August 17, 2017
Location: Sacramento

(c) Adoption Hearing: Date: October 12, 2017
Location: Atascadero

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

In 1998, the Legislature created the Nearshore Fishery Permit for the take of cabezon; California scorpionfish; California sheephead; kelp and rock greenlings; and, black-and-yellow, China, gopher, grass and kelp rockfishes. In 2003, the Fish and Game Commission (Commission) established a regional restricted access program allowing take with hook-and-line and dip net (used while diving) gears; trap gear is allowed with a Nearshore Fishery Permit Gear Endorsement. Additionally, 20-year commercial fishers could qualify for a non-transferable permit. Permit transfers are allowed as long as the new entrant purchased two permits, agreed to retire one and fish the other permit if the transfer was approved. Gear endorsement transfers are allowed when the new entrant has a valid permit for the same regional management area. Permit holders only need to purchase one gear endorsement as they are transferable one-for-one. The transfer fees for Nearshore Fishery Permits and gear endorsements

are \$500 and \$75, respectively. Notarized letters are used to apply for permit transfers.

In 2003, the Commission established the Deeper Nearshore Species Fishery Permit for the take of black, blue, brown, calico, copper, olive, quillback and treefish rockfishes, amid concerns over increasing effort by those that did not qualify for a Nearshore Fishery Permit. The Deeper Nearshore Species Fishery Permit is a statewide permit without gear restrictions, and is nontransferable.

Between 2003 and 2016, the number of Nearshore Fishery Permits decreased from 220 to 141 due to permit transfers and nonrenewal; and, the Deeper Nearshore Species Fishery Permits decreased from 281 to 180 due to nonrenewal. Overall the nearshore fishery has seen a 35 percent decline in the number of permits. In 2015, the Department of Fish and Wildlife (Department) surveyed nearshore permittees and found that majority (96 percent) supported making the Deeper Nearshore Species Fishery Permit transferable, and while not asked directly, many expressed support for making the Nearshore Fishery Permit transferable on a one-for-one basis. Additionally, in the last several years the Department and the Commission have heard from many fishers about the need to provide for Deeper Nearshore Species Fishery Permit transfers as well as change the Nearshore Fishery Permit transfer provisions.

For the Nearshore Fishery Permit, it has become quite difficult to obtain two permits for the same region that the new entrant wants to fish in. Additionally, the inability to transfer a Deeper Nearshore Species Fishery Permit impacts fishers wanting to enter the fishery, as well as those that want to retire. Finally, the nearshore and deeper nearshore species are frequently caught together and fishers with only one permit and not the other have to discard species that they do not have a permit for.

Changing transfer rules for both nearshore permits will allow new entrants into the fishery, and allow permittees to retire or leave the fishery and either recoup something for their investment or pass their permit along to a family member. It will also make it easier for those with one permit to obtain the other permit, reducing discards.

Unless specified, all section references in this document are for the regulations in Title 14, California Code of Regulations.

Amend Subsection 150(b): Permittees can only hold one permit

Proposed Changes – one permit per person

Current regulations state that a person will receive only one Nearshore Fishery Permit for use in only one regional management area during initial

issuance. This regulation change would clarify that Nearshore Fishery Permit holders can only have one permit, regardless of the regional management area, at any time.

Necessity/Rationale

The proposed change would clarify the Commission’s and Department’s intent that a person cannot hold more than one Nearshore Fishery Permit, regardless of the regional management area stated on the permit. This is supported by state trip limits for cabezon, sheephead and greenlings as well as federal trip limits for rockfishes and California scorpionfish that are based on the individual’s commercial fishing license identification number, such that having additional permits would not allow for the taking of more than one trip limit per person.

Amend Subsection 150(e)(5): Initial Qualification for 20-year California Commercial Fishermen

Proposed changes – death of non-transferable Nearshore Fishery Permit holder

This subsection will be deleted and added to subsection (g) permit transfers, procedures and timeline to keep all transfer provisions together.

Amend Subsection 150(g): Permit Transfer, Procedures, and Timeline

Table 1. Summary of proposed changes to Subsection 150(g).

Current Subsection Number	Regulation Subject	Proposed Subsection Number
150(g)(1)(A)	2-for-1 transfers; Transferee conditions	150(g)(2), 150(g)(5), 150(g)(6)
150(g)(1)(B-D)	Transfer paperwork (notarized letter)	150(g)(4)
150(g)(1)(E)	Former permit holder cannot take nearshore fish species	Proposed to be repealed
150(g)(2)	Commission can prescribe other transfer provisions	Proposed to be repealed
150(g)(3) and 150(g)(4)	Transfer provisions and paperwork after permittees death	150(g)(3) and 150(g)(4)
150(g)(5)	Exempt permit transfer from two-for-one requirements in the case of the estate of the deceased transferring to the deceased’s family member	Proposed to be repealed

Proposed Changes – Current two-for-one transfer provisions

Fish and Game Code Section 7857(j) states that a commercial license, permit or endorsement is nontransferable unless otherwise provided in Fish and Game Code. Proposed subsection 150(g)(1) would make this

section inoperable under authority provided in the Nearshore Fishery Management Act, Fish and Game Code Section 8587.1(b).

Subsection 150(g)(1)(A) currently allows Nearshore Fishery Permit transfers on a two-for-one basis, with one permit being surrendered to the Department for cancellation at the time of the transfer, if the number of Nearshore Fishery Permits in a regional management area exceeds the capacity goal. This subsection is proposed to be repealed and replaced by Subsection 150(g)(2), which would prescribe one-for-one permit transfers and require that the transfer be for the same regional management area on the permit.

Necessity/Rationale

In 2003, 220 Nearshore Fishery Permits were issued and over the next thirteen years 41 Nearshore Fishery Permits were transferred (with an additional 41 Nearshore Fishery Permits retired) and 35 Nearshore Fishery Permits were not renewed. Of the 35 Nearshore Fishery Permits that were not renewed, 25 Nearshore Fishery Permits were transferable and could have been sold but weren't. The remaining 10 Nearshore Fishery Permits that were not renewed were nontransferable. In 2016, 144 Nearshore Fishery Permits were issued for an attrition rate of 35 percent.

The proposed regulation change would change the Nearshore Fishery Permit transfer requirements from two-for-one, whereby the new entrant has to purchase two permits, agreed to retire one and fish the other permit if the transfer was approved, to one-for-one. While each region remains above its capacity goal, great progress has been made towards reaching the capacity goals. Additionally, the capacity goals are outdated. In 2002, only one nearshore species had been assessed (black rockfish in 1999) and total allowable catches were developed using a precautionary approach that was based on 50 percent of historic catch. Trip limits were derived from the commercial allocation based on the total allowable catches. Since then, over half of the nearshore species have been assessed (Table 2), resulting in increased total allowable catches and increased trip limits (Table 3), in most cases, such that the established capacity goals are no longer applicable.

Table 2. List of nearshore species and year the stock was assessed.

Species	Assessment year
<i>Deeper Nearshore Rockfish</i>	
Black rockfish	2015, 2007, 2003, 1999
Blue rockfish	2007
Brown rockfish	2013
Calico rockfish	
Copper rockfish	2013
Olive rockfish	
Quillback rockfish	
Treefish	
<i>Shallow Nearshore Rockfish</i>	
Black-and-yellow rockfish	
China rockfish	2015
Gopher rockfish	2005
Grass rockfish	
Kelp rockfish	
<i>Other Nearshore Fishery Permit species</i>	
Cabazon	2009, 2005, 2003
California scorpionfish	2004
California sheephead	2004
Kelp greenling	2015, 2005
Rock greenling	

Table 3. Nearshore species trip limits for 2003 and 2017.

Minor Nearshore Rockfish, North of 40°10' N lat. Includes shallow and deeper rockfish combined. Numbers in parentheses are rockfish other than black rockfish.						
	Jan-Feb	Mar-Apr	May-Jun	Jul-Aug	Sep-Oct	Nov-Dec
2003	3000 (900)	3000 (900)	3000 (900)	4000 (1200)	4000 (1200)	4000 (1200)
2017	8500 (1200)	7000 (1200)	7000 (1200)	7000 (1200)	7000 (1200)	7000 (1200)
Deeper Nearshore Rockfish, South of 40°10' N lat.						
	Jan-Feb	Mar-Apr	May-Jun	Jul-Aug	Sep-Oct	Nov-Dec
2003	200	Closed	200	500	300	200
2017	1000	Closed	1000	1000	1000	1000
Shallow Nearshore Rockfish, South of 40°10' N lat.						
	Jan-Feb	Mar-Apr	May-Jun	Jul-Aug	Sep-Oct	Nov-Dec
2003	200	Closed	400	400	300	200
2017	1200	Closed	1200	1200	1200	1200
Cabazon						
	Jan-Feb	Mar-Apr	May-Jun	Jul-Aug	Sep-Oct	Nov-Dec
2003	100	Closed	1000	1000	400	100
2017	300	Closed	500	500	500	300
California scorpionfish						
	Jan-Feb	Mar-Apr	May-Jun	Jul-Aug	Sep-Oct	Nov-Dec
2003	300	Closed	300	400	400	300
2017	1500	Closed	1500	1500	1500	1500
California sheephead						
	Jan-Feb	Mar-Apr	May-Jun	Jul-Aug	Sep-Oct	Nov-Dec
2003	2000	Closed	2400	2400	2400	2400
2017	2000	Closed	2400	2400	2400	2400

Table 3. Nearshore species trip limits for 2003 and 2017.

Greenlings						
	Jan-Feb	Mar-Apr	May-Jun	Jul-Aug	Sep-Oct	Nov-Dec
2003	25	Closed	25	25	25	25
2017	150	Closed	200	200	200	150

Additionally, the nearshore fishery has been successfully managed using a combination of bimonthly trip limits and depth restrictions. Department staff monitor the catch of nearshore species inseason and recommend changes to trip limits as needed. As a result, the commercial nearshore fishery has not closed early since 2005. Finally, analysis of Nearshore Fishery Permit transfers and fishing activity before and after the transfer reveals half of the new permittees actually fished less than one of the previous owners. This would indicate that fishing effort will only moderately increase, and any increases could be managed by adjusting the bimonthly trip limits.

Proposed changes – Transfer paperwork

Current regulations in Subsection 150(g)(1)(B-D) require a notarized letter from buyer and sellers stating the conditions of the transfer, describe completion of the transfer after payment of fees and review by the Department, and if the person holds a nontransferable Nearshore Fishery Permit, that permit shall be surrendered to the Department. These subsections are proposed to be repealed and replaced with subsections 150(g)(4) and 150(g)(6). Subsection 150(g)(4) would change the notarized letters to a notarized application, specify the effective date is the date of written notification by the Department of approval of the transfer, and that the permit is valid for the remainder of the permit year. Subsection 150(g)(6) would require the transferee to surrender their nontransferable Nearshore Fishery Permit to the Department when they receive the transferable permit.

Necessity/Rationale

The proposed regulation requires a notarized transfer application to formalize the transfer process and collect accurate information from the permit holder and the proposed permit holder in the place of a notarized letter for each transfer.

Proposed changes – Former permit holder cannot take nearshore fish species

Subsection 150(g)(1)(E) states that the former permit holder cannot take nearshore species once the permit transfer is completed unless otherwise permitted by law. This subsection is proposed to be repealed as it is redundant.

Proposed changes – Commission can prescribe other transfer provisions

Subsection (150)(g)(2) allows the Commission to prescribe other transfer criteria should the number of Nearshore Fishery Permits fall below the capacity goal. This subsection is proposed to be repealed because it is redundant, as the Commission retains the ability to change regulations. Additionally, with permit transfers changing to a one-for-one basis there is little need to change transfer requirements.

Proposed changes – Permit transfers after the death of the permit holder

Subsections (150)(g)(3) and 150(g)(4) describe the conditions for transfer of a Nearshore Fishery Permit by the estate of the deceased permit holder, allowing for transfer within one year of the death, and requires a notarized letter detailing the conditions of the transfer. These provisions will be included in subsections 150(g)(3) and 150(g)(4). The new Subsection 150(g)(3) requires that the estate of the deceased permit holder to temporarily relinquish the permit to the Department until the transfer is completed, but allows the estate to renew the permit to keep it current. Additionally, it will allow two years for the transfer to take place instead of the current one year. Instead of having a separate subsection to deal with transfer paperwork for the deceased permit holder's estate, it will be included in Subsection 150(g)(4).

Necessity/Rationale

This amendment is necessary because it is unlawful for the estate to allow another commercial fisherman to fish the permit and therefore is required to temporarily relinquish the permit to the Department until the permit transfer can take place. Additionally, changing the amount of time allowed, from one to two years, to transfer permits will give the estate more time to try to find a buyer for the permit. Finally, requiring a notarized application will allow for collection of information from the permit holder and the proposed permit holder in the place of a notarized letter for each transfer.

Proposed changes – Delay transfer pending final resolution of pending action

Subsection 150(g)(5) will be added stating that the transfer shall be deferred pending final resolution of any criminal, civil, and/or administrative action involving the current permit holder that could affect the status of the permit. This will prevent a permit from being transferred in an effort to avoid a suspension or revocation of a permit.

Proposed changes – death of non-transferable Nearshore Fishery Permit holder

Currently, Subsection 150(e)(5) states that a non-transferable Nearshore Fishery Permit becomes null and void upon the death of the individual to whom the permit was issued. The proposed change will move the requirement to Subsection 150(g)(7) and will add a requirement that the estate shall immediately surrender the permit to the Department.

Necessity/Rationale

This amendment is necessary because it is unlawful for the estate to allow another commercial fisherman to fish the permit and therefore is required to surrender the permit to the Department. The proposed regulations are consistent with current regulations for lobster operator permits (Section 122(c)(5)). This subsection was previously Subsection 150(e)(5) under initial qualification for 20-year fishermen, and is being moved to the permit transfers subsection for clarity.

Amend Subsection 150(m)(3): Transfer Appeals

Currently, the appeals process is a two-step process with the Department reviewing the appeal based on the fisher's request. If the Department denies the appeal, then the permittee has 60 days to appeal to the Commission in writing. The changes to Subsection 150(m)(3) would reduce the appeals to a one-step process via a written request to the Commission for an appeal of the Department's denial of a Nearshore Fishery Permit transfer within 60 calendar days of the date of the Department's denial.

Amend Subsection 150(n): Fees

Current regulations stipulate that the Department shall charge a nonrefundable fee for each permit transfer, and that if more than one permit is required for the transfer only one fee will be charged. The proposed change would be to delete the reference to more than one permit required to transfer to be consistent with the new transfer provisions.

Add Subsection 150.02(j): Permit transfers, procedures and timelines

Current regulations provide for a permit with annual renewal, initial qualifying criteria from 2003, annual renewal requirements, and a control date for a future restricted access program. Current regulations do not provide for transfer of Deeper Nearshore Species Fishery Permits. Subsection 150.02(j) would be added making all Deeper Nearshore Species Fishery Permits transferable on a one-for-one basis; allowing transfers after the death of the permit holder with a two year time limit, providing the estate temporarily relinquishes the permit to the department until the transfer can be completed; requiring a notarized application be

submitted along with payment of nonrefundable transfer fee; specifying that the effective date is the date of written notice of approval by the Department; deferring permit transfers until final resolution of any pending action against the current permit holder that could affect the status of the permit; and allowing the person denied transfer to appeal any denial to the Commission within 60 days of the Department's denial.

Necessity/Rationale

In 2003, 281 Deeper Nearshore Species Fishery Permits were issued, capping participation in this fishery. Over the last thirteen years, 101 Deeper Nearshore Species Fishery Permits have not been renewed for a 36 percent attrition rate. However, the permittees are ageing with over half the participants over 50 years of age. Other fishers would like to get into the fishery while many of the permittees would like to retire or leave the fishery.

The proposed regulation would allow all Deeper Nearshore Species Fishery Permit holders to transfer their permit to a licensed California commercial fisherman on a one-for-one basis. This would allow existing Deeper Nearshore Species Fishery Permit holders to retire and pass on their permit to a family member or business partner, or sell to a new entrant. Attrition will likely continue to occur but at a slower pace. While effort in the Deeper Nearshore Species Fishery Permit fishery may increase with new entrants, Department staff monitor the catch of Deeper Nearshore Species Fishery Permit species inseason to ensure that catch limits are not exceeded and recommend changes to trip limits as needed.

Additionally, while many fishers (86 in 2016-17) hold both a Nearshore Fishery Permit and a Deeper Nearshore Species Fishery Permit, there are many with only one permit (58 Nearshore Fishery Permit and 98 Deeper Nearshore Species Fishery Permit in 2016-17). These permittees sometimes catch species that require the other permit to land, thus these fish have to be discarded. Easing transfer rules for both permits will make it easier for those with just one permit (Nearshore Fishery Permit or Deeper Nearshore Species Fishery Permit) to purchase the other permit, thus reducing regulatory discards.

Amend Subsection 150.02(d): Fees for Deeper Nearshore Species Fishery Permit Transfers

Current regulations provide for an annual permit fee for a Deeper Nearshore Species Fishery Permit, but there are no fees for the transfer of these permits. This change would add a fee as specified in Subsection 705(b) for the transfer of a Deeper Nearshore Species Fishery Permit. See below for additional discussion of permit transfer fees.

Amend Subsection 150.03(c)(5): Death of the non-transferable Nearshore Fishery Gear Endorsement holder

Currently, a non-transferable Nearshore Fishery Gear Endorsement becomes null and void upon the death of the individual to whom the permit was issued. The proposed amendment will move this requirement to subsection 150.03(d)(6) and add that the estate shall immediately surrender the gear endorsement to the Department.

Necessity/Rationale

This amendment is necessary because it is unlawful for the estate to fish with the gear endorsement and therefore is required to surrender the gear endorsement to the Department. The proposed regulations are consistent with the proposed regulations for Nearshore Fishery Permits and the current regulations for lobster operator permits (Section 122(c)(5)).

Amend Subsection 150.03(d): Transfer of Nearshore Fishery Gear Endorsements

Current regulations allow for transfer of Nearshore Fishery Gear Endorsements on a one-for-one basis and require a notarized letter from buyer and seller. The proposed changes include changing from a notarized letter to a notarized application, specifying that the effective date is the date of written notification by the Department of approval of the transfer, allowing the estate of a deceased transferable Nearshore Fishery Gear Endorsement holder up to two years to complete a transfer, providing that the estate temporarily relinquish the permit to the department until the transfer can be made; and, streamlining the appeals process when denied a gear endorsement transfer.

Necessity/Rationale

These changes are necessary to mirror the changes to the Nearshore Fishery Permit transfer rules, since fishers are required to have a Nearshore Fishery Permit in order to have a Nearshore Fishery Gear Endorsement. Most of the time, the Nearshore Fishery Permit and Nearshore Fishery Gear Endorsement are transferred to the same person. Having different rules for the permit and the gear endorsement would be confusing for both the person transferring and the person trying to purchase the permit and gear endorsement.

Amend Subsection 150.03(h)(3): Nearshore Fishery Gear Endorsement Transfer Appeals

Currently, the appeals process is a two-step process with the Department reviewing the appeal based on the fisher's request. If the Department denies the appeal, then the permittee has 60 days to appeal to the Commission in writing. The changes to Subsection 150.03(h)(3) would

reduce the appeals to a one-step process via a written request to the Commission for an appeal of the Department's denial of a Nearshore Fishery Gear Endorsement transfer within 60 calendar days of the date of the Department's denial.

Amend Subsection 705(b): Transfer Fees

Current regulations provide for a Nearshore Fishery Permit transfer fee of \$500. There are no provisions for a transfer fee for a Deeper Nearshore Species Fishery Permit. The proposed change would increase the Nearshore Fishery Permit transfer fee to a range of \$1,000 to \$2,500, and establish a permit transfer fee for the Deeper Nearshore Species Fishery Permit of a range of \$1,000 to \$2,500. Additionally, the proposed changes would incorporate the transfer application into the regulations.

Necessity/Rationale

The proposed fees for the transfer of a Nearshore Fishery Permit and Deeper Nearshore Species Fishery Permit were set based on a fiscal analyses completed by the Department to recover costs incurred by the Department pursuant to FGC sections 1050 and 8587.1. This transfer fee will cover the administrative costs of the permit, costs to review the applications and to execute approved transfer requests, as well help offset the increased costs to monitor and track nearshore fishery performance and make management adjustments.

The Nearshore Fishery Permit And Nearshore Fishery Gear Endorsement Transfer Application (DFW 1045) will replace the notarized letters that currently are submitted by the permit holders and transferee to apply for a transfer. The Deeper Nearshore Species Fishery Permit Transfer Application (DFW 1048) is new and will standardize the transfer request process. These transfer applications will need to be reviewed and approved by the Department and require the permit holder's signature "under penalty of perjury" that the information submitted is accurate; both DFW 1045 and DFW 1048 must also be notarized.

Commercial fishing is a highly regulated activity involving the take of public trust resources. Effective administration, management, and enforcement of marine fisheries require accurate information about the resources and those who participate in their take. Penal Code Section 115 makes it a crime to knowingly file a forged document with a government office in the state. Fish and Game Code Section 1054 makes it unlawful to submit any false, inaccurate, or otherwise misleading information on any application or other document presented to the Department for the purpose of obtaining a license, permit, tag or other entitlements and allows the Department to require such applicants to show proof of the statements

or facts required for obtaining such license or permit. California Code of Civil Procedure Section 2015.5 provides that such statements or facts may be supported by an unsworn declaration in writing of such an applicant which recites that it is certified or declared to be true under penalty of perjury. By requiring such certification on its forms, the Department notifies the applicants of his/her legal duty while establishing his/her knowledge of such duty. Requiring that the signature of the applicant be notarized on both DFW 1045 and DFW 1048 helps minimize the potential for fraud.

Other Changes

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

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

Authority: Sections 713, 1050, 7071 and 8587.1, Fish and Game Code.
Reference: Sections 713, 1050, 7071, 7850, 7852.2, 7857, 7858, 8043, 8046, 8102, 8585.5, 8587, 8587.1, 8588, 8589.5 and 8589.7, 9001 and 9001.5, 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:

Marine Resources Committee Meeting, November 15, 2016, Los Alamitos, CA

Marine Resources Committee Meeting, March 23, 2017, Oceanside, CA

The Notice, Discussion and Adoption meetings are being held in three of the four nearshore fishery permit regions and the two Marine Resources Committee meetings were held in the fourth nearshore permit region giving permittees ample opportunity to provide comment.

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

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 proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

(d) Description of Reasonable Alternatives That Would Lessen Adverse Impact on Small Business:

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 ease transfer requirements for Nearshore Fishery Permits and to allow transferable Deeper Nearshore Species Fishery Permits would allow new members to enter the fishery. This is needed to maintain a viable nearshore fishery in California, resulting in a positive economic impact for participants and small businesses.

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 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 impacts ranging from \$1,000 to \$2,500 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

VII. Economic Impact Assessment:

Currently (2016) there are about 238 Nearshore Fishery Permits and Deeper Nearshore Species Fishery Permits in use. The numbers of nearshore and deeper nearshore permits have declined by 35 percent from 2003 to 2016. About 80 nearshore permits were dropped due to nonrenewal and permit transfers. Deeper Nearshore Species Fisheries Permits have also dropped by about 100 permits due to nonrenewal.

A 2015 Department survey found that 96 percent of Nearshore permittees expressed support for making the Deeper Nearshore Species Fishery Permit transferable. Many permittees also added that they support making the Nearshore Fishery Permit transferable on a one-for-one basis since for the Nearshore Fishery Permit, it has become quite difficult to obtain two permits for the same region. The existing inability to transfer a Deeper Nearshore Species Fishery Permit impacts fishers wanting to enter the fishery, as well as those that want to retire. Another environmental and economic impact should be lessened as these nearshore species are frequently caught together and fishers with only one permit and not the other have to discard species that they do not have a permit for.

Changing transfer rules for both nearshore permits will allow new entrants into the fishery, and allow permittees to retire or leave the fishery and either recoup something for their investment or pass their permit along to a family member or business partner. It will also make it easier for those with one permit to obtain the other permit, reducing discards. Fishing effort may increase only moderately, and any potential increases would be limited by the bimonthly trip limits.

The proposed regulations to ease transfer requirements for Nearshore Fishery Permits and to allow transferable Deeper Nearshore Species Fishery Permits would allow new members to enter the fishery. This is needed to maintain a viable nearshore fishery in California, and is anticipated to result in positive economic impacts for participants and businesses.

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The Commission does not anticipate any adverse impacts on the creation or elimination of jobs within the State 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 proposed regulations to ease transfer requirements for Nearshore Fishery Permits and to allow transferable Deeper Nearshore Species Fishery Permits would allow new members to enter the fishery which may result in a gradual increase in harvest.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The Commission anticipates a positive impact on the creation of new businesses with permit transferability. The Commission does not anticipate any impacts on the elimination of existing businesses within the State 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.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The Commission does not anticipate any impacts on the expansion of businesses currently doing business within the State 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.

- (d) Benefits of the Regulation to the Health and Welfare of California Residents:

The Commission does not anticipate any benefits to the health and welfare of California residents.

- (e) Benefits of the Regulation to Worker Safety:

The Commission does not anticipate any benefits to worker safety.

- (f) Benefits of the Regulation to the State's Environment:

The Commission anticipates benefits to the environment with improved fisheries management and decreased regulatory discards.

- (g) Other Benefits of the Regulation: None.

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 who 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.