

STAFF SUMMARY FOR OCTOBER 9-10, 2019

16. EXPERIMENTAL FISHING PERMIT PROGRAM (PHASE 1)**Today's Item****Information** ☐**Action** ☒

Discuss and consider adopting proposed changes to experimental fishing permit (EFP) regulations, to allow for issuing EFPs to fishermen who were issued experimental gear permits (EGPs) in 2018 for the box crab EGP program.

Summary of Previous/Future Actions

- | | |
|--|--------------------------------------|
| • FGC approves two-phase rulemaking approach | Jun 12-13, 2019; Redding |
| • DFW update and MRC discussion | Jul 11, 2019; MRC, Ventura |
| • Notice hearing | Aug 7-8, 2019; Sacramento |
| • Today's discussion/adoption hearing | Oct 9-10, 2019; Valley Center |

Background

In Aug 2019, FGC authorized publishing notice of proposed adoption of sections 90 and 704, concerning the issuance of EFPs, as Phase 1 of a two-phase rulemaking process.

As described in greater detail within the staff summary for the Aug 2019 FGC meeting (Exhibit 1), DFW currently administers an EGP program for the box crab fishery, in order to research the potential for developing a new targeted fishery in California (hereinafter referred to as the box crab experimental program). In Dec 2018, pursuant to Fish and Game Code Section 8606 (2017), FGC approved eight EGPs associated with the box crab experimental program for issuance by DFW; these eight permits will expire on Mar 31, 2020.

Fish and Game Code Section 8606 was repealed effective Jan 1, 2019, thus eliminating FGC's ability to renew or authorize any new EGPs. A new Fish and Game Code Section 1022 was created, which provides for establishing an EFP program upon FGC adopting regulations. With the repeal of Section 8606, and absent regulations implementing the new Section 1022, the box crab experimental program cannot be continued beyond the Mar 31, 2020 expiration of the existing permits.

Per the two-phase rulemaking approach approved by FGC in Jun 2019 (see Exhibit 1), this Phase 1 rulemaking proposes a process for issuing EFPs pursuant to Fish and Game Code Section 1022 only to fishermen approved by FGC in Dec 2018 for box crab EGPs. Adopting the proposed regulations in this rulemaking (Phase 1) will ensure that the current box crab experimental program can continue while a larger programmatic rulemaking (Phase 2) can be developed with stakeholder engagement.

Proposed Regulations

The proposed regulations will add to Title 14 a new Chapter 5.6, Experimental Fishing Permit Program, containing new Section 90, Issuance of Experimental Fishing Permits. The proposed Section 90 will establish a process for FGC approval and DFW issuance of EFPs to those applicants previously approved to receive a box crab EGP, and includes the following concepts:

- No more than eight valid EFPs will be issued at any one time.

STAFF SUMMARY FOR OCTOBER 9-10, 2019

- An applicant shall submit a written request for an EFP at least 60 days prior to the expiration date of their current EGP.
- FGC may establish standard terms applicable to all fishery participants.
- FGC may approve the adoption, amendment, or repeal of special conditions unique to the experimental fishery set forth in Form DFW 1085 as it deems necessary for research and the conservation and management of marine resources and the environment.
- DFW shall notify a permittee at least 30 days before recommending a change to the special conditions of the EFP issued to that permittee.
- Access to future permits, if a fishery is developed, is not implied by participation in the EFP program.

The proposed regulations will also add new Section 704, Experimental Fishing Permits; Fees and Forms to Title 14, which will stipulate an annual box crab EFP fee of \$4,487.75. Pursuant to Fish and Game Code, subdivision 1022(g), FGC is authorized to charge a fee as necessary to fully recover, but not exceed, all reasonable implementation and administrative costs of DFW and FGC related to the EFP. A detailed discussion of these costs can be found in the initial statement of reasons (ISOR; Exhibit 2) and economic and fiscal impact statement (Std 399; Exhibit 3).

Proposed Section 704 will also incorporate by reference the Experimental Fishing Permit Terms and Conditions Form DFW 1085 (New 08/01/2019) (Exhibit 4), which identifies the person(s) and vessel authorized to conduct activities under the EFP and specifies the standard terms and special conditions to which EFP permit holders will be subject. The proposed standard terms and special conditions are consistent with those used to issue the box crab EGPs (Exhibit 5).

California Environmental Quality Act (CEQA)

A notice of exemption (Exhibit 6) has been drafted consistent with FGC staff's recommendation to rely on two CEQA categorical exemptions (Class 6 and Class 7) for the proposed regulation changes. Staff has reviewed all of the available information possessed by FGC relevant to the issue, including the analysis and rationale presented in exhibits 6 and 7, and does not believe that reliance on these categorical exemptions is precluded by the exceptions set forth in CEQA Guidelines Section 15300.2.

Significant Public Comments

Two comments were received during the public comment period. DFW has provided a detailed summary of and response to the individual comments and, for the reasons set forth in its responses to public comments, does not believe that the comments received warrant changes to the proposed regulations (Exhibit 8).

Recommendation

FGC staff: Rely on two CEQA categorical exemptions (Class 6 and Class 7) for the proposed regulation changes and adopt the proposed regulation changes as recommended by DFW.

DFW: Adopt the proposed regulation changes as detailed in the ISOR.

STAFF SUMMARY FOR OCTOBER 9-10, 2019

Exhibits

1. [Staff summary from Aug 7-8, 2019 FGC meeting \(for background only\)](#)
2. [ISOR](#)
3. [Economic and fiscal impact statement \(Std. 399\)](#)
4. [Proposed form DFW 1085, *Experimental Fishing Permit Terms and Conditions*](#)
5. [Box crab experimental gear permit terms and conditions, dated Dec 20, 2018 \(for background only\)](#)
6. [Draft notice of exemption](#)
7. [DFW memo transmitting ISOR and providing overview of CEQA categorical exemptions, received Jul 22, 2019](#)
8. [DFW memo responding to public comments, received Sep 25, 2019](#)
9. [DFW presentation](#)

Motion/Direction

Moved by _____ and seconded by _____ that the Commission has determined, based on the record, that this approval is exempt from the California Environmental Quality Act pursuant to the guidelines in sections 15306 and 15307, Title 14, California Code of Regulations, and adopts the proposed regulations in Section 90 and Section 704, related to issuing experimental fishing permits.

STAFF SUMMARY FOR AUGUST 7-8, 2019**19. EXPERIMENTAL FISHING PERMIT PROGRAM (PHASE 1)****Today's Item****Information** ☐**Action** ☒

Consider authorizing publication of notice of intent to adopt experimental fishing permit (EFP) regulations, to allow for issuing EFPs to fishermen that were issued experimental gear permits in 2018 for the box crab experimental gear permit program.

Summary of Previous/Future Actions

- | | |
|--|----------------------------------|
| • FGC approves two-phase rulemaking approach | Jun 12-13, 2019; Redding |
| • DFW update and MRC discussion of two-phase rulemaking approach | Jul 11, 2019; MRC, San Clemente |
| • Today's notice hearing | Aug 7-8, 2019; Sacramento |
| • Discussion/adoption hearing | Oct 9-10, 2019; Valley Center |

Background

At its Dec 12-13, 2018 meeting, FGC approved issuing experimental gear permits to applicants who had requested to participate in a collaborative fisheries research program to study the brown box crab (*Lopholithodes foraminatus*) and the potential for developing a new targeted fishery in California (hereinafter referred to as the box crab experimental program). As discussed in a previous staff summary (Exhibit 4), pursuant to Fish and Game Code Section 8606 FGC approved eight experimental gear permits for issuance by DFW; the eight permits will expire on Mar 31, 2020.

Fish and Game Code Section 8606 was repealed effective Jan 1, 2019, thus eliminating FGC's ability to renew or authorize any new experimental gear permits. A new Fish and Game Code Section 1022 was created, which provides for establishing an EFP program upon FGC adopting regulations. Section 1022 also provides FGC with expanded authority to authorize, for research, educational, limited testing, data collection, compensation fishing, conservation engineering, or exploratory fishing, or any combination of these purposes, an EFP that allows commercial or recreational marine fishing activity otherwise prohibited by state fishing laws or regulations.

With the repeal of Fish and Game Code Section 8606, and absent regulations implementing Fish and Game Code Section 1022, the box crab experimental program cannot be continued beyond the Mar 31, 2020 expiration of the existing permits. To provide a pathway for the box crab experimental program to continue while a new EFP program is thoughtfully developed, DFW proposed a two-phase rulemaking approach that FGC approved in Jun 2019. Phase 1 proposes a process for issuing EFPs to fishermen approved for box crab experimental fishing gear permits in Dec 2018. Thus, today's item is intended to ensure that the current box crab experimental program can continue while a larger programmatic rulemaking (Phase 2) can be developed with stakeholder engagement.

STAFF SUMMARY FOR AUGUST 7-8, 2019***Proposed Regulations***

The proposed regulations in Phase 1 will add new Chapter 5.6, Experimental Fishing Permit Program, containing new Section 90, Issuance of Experimental Fishing Permits, to Title 14. Proposed Section 90 will establish the process for FGC approval and DFW issuance of EFPs to those applicants previously approved to receive a box crab experimental gear permit, and includes the following concepts:

- The applicant shall submit a written request for an EFP at least 60 days prior to the expiration date of their current experimental gear permit.
- No more than eight valid EFPs will be issued at any one time.
- FGC may establish standard terms applicable to all fishery participants.
- FGC may approve the adoption, amendment, or repeal of special conditions unique to the experimental fishery set forth in Form DFW 1085 as it deems necessary for research and the conservation and management of marine resources and the environment.
- DFW shall notify a permittee at least 30 days before recommending a change to the special conditions of the EFP issued to that permittee.
- Access to future permits, if a fishery is developed, is not implied by participation in the EFP program.

The proposed regulations will also add new Section 704, Experimental Fishing Permits; Fees and Forms to Title 14, which will stipulate the annual box crab EFP fee of \$4,487.75. Pursuant to Fish and Game Code subdivision 1022(g), FGC is authorized to charge a fee as necessary to fully recover, but not exceed, all reasonable implementation and administrative costs of DFW and FGC related to the EFP. A detailed discussion of these costs can be found in the draft initial statement of reasons (ISOR; Exhibit 2) and draft economic and fiscal impact statement (Std 399; Exhibit 6).

Proposed Section 704 will also incorporate by reference the Experimental Fishing Permit Terms and Conditions Form DFW 1085 (New 08/01/2019) (Exhibit 3), which identifies the person(s) and vessel authorized to conduct activities under the EFP and specifies the standard terms and special conditions to which EFP permit holders will be subject. The proposed standard terms and special conditions are consistent with those used to issue the experimental fishing gear permits (Exhibit 5).

Significant Public Comments

A fishery organizer expressed inspiration from DFW's work to date on the box crab EFPs and intends to convene a fisherman's data review committee to discuss approaches to experimental fisheries, beginning with a discussion of whale entanglement and marine mammal conflict resolution (Exhibit 8).

Recommendation

FGC staff: Authorize publication of the notice and request the effective date as recommended by DFW.

STAFF SUMMARY FOR AUGUST 7-8, 2019

DFW: Authorize publication of the notice as detailed in the draft ISOR (Exhibit 2), and request that the Office of Administrative Law make the regulation effective on or before January 1, 2020 (Exhibit 1).

Exhibits

1. DFW memo transmitting ISOR and providing overview of California Environmental Quality Act categorical exemptions, received Jul 22, 2019
2. Draft ISOR
3. Draft form DFW 1085, Experimental Fishing Permit Terms and Conditions
4. Staff summary for Agenda Item 11, Dec 12-13, 2018 FGC meeting (for background only)
5. Box crab experimental gear permit terms and conditions, dated Dec 20, 2018 (for background only)
6. Draft economic and fiscal impact statement (Std. 399)
7. Draft notice of exemption
8. Email from Chris and Dominique Miller, concerning a fisherman's data review committee to discuss experimental fisheries, received Jul 25, 2019
9. DFW presentation

Motion/Direction

Moved by _____ and seconded by _____ that the Commission authorizes publication of a notice of its intent to adopt Chapter 5.6, containing Section 90, and adopt Section 704, related to experimental fishing permit regulations.

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

Add Chapter 5.6, Section 90; and Add Section 704,
Title 14, California Code of Regulations
Re: Experimental Fishing Permit Program (Phase 1)

I. Date of Initial Statement of Reasons: July 22, 2019

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing: Date: August 8, 2019
Location: Sacramento, CA

(b) Discussion/Adoption Hearing: Date: October 10, 2019
Location: Valley Center, 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:

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR).

The California Department of Fish and Wildlife (Department) is proposing to add new Chapter 5.6, Experimental Fishing Permit (EFP) Program, which will contain new Section 90, Issuance of Experimental Fishing Permits. New Section 704, Experimental Fishing Permits; Fees and Forms, relating to fees and forms associated with issuance of EFPs is also proposed to be added.

The proposed regulations implement, in part, Assembly Bill (AB) 1573 (also known as the California Fisheries Innovation Act of 2018) which became effective on January 1, 2019. This legislative action repealed the experimental gear permit (EGP) provisions in Section 8606, Fish and Game Code (FGC), and added a new FGC Section 1022, providing for an EFP program to facilitate fishery-related exploration and experimentation to inform fishery management.

Now-repealed FGC Section 8606 had required the Fish and Game Commission (Commission) to encourage the development of new types of commercial fishing gear and new methods of using existing commercial fishing gear by approving EGPs to be issued by the Department. AB 1573 eliminated the EGP, which focused solely on commercial fishing gear types, and replaced it with the more expansive EFP that, under the authority of new FGC Section 1022, could be issued for both recreational and commercial fishing activities.

Under new FGC Section 1022, the Commission may authorize, for research, educational, limited testing, data collection, compensation fishing, conservation engineering, or

exploratory fishing, or any combination of these purposes, an EFP to be issued by the Department that authorizes commercial or recreational marine fishing activity otherwise prohibited by state fishing laws or regulations. Activities conducted under an EFP would be subject to certain Standard Terms and Special Conditions as deemed necessary by the Commission to ensure the protection of marine resources and are additionally required to be consistent with policies set forth in FGC Section 7050 and any applicable fishery management plan.

Existing Experimental Gear Permits

At its December 12, 2018 meeting, and prior to the repeal of FGC Section 8606, the Commission approved the issuance of EGP permits to applicants who had requested to participate in a collaborative fisheries research program to study the brown box crab (*Lopholithodes foraminatus*) and the potential for development of a new targeted fishery in California (hereinafter referred to as the box crab program). As discussed in the Commission staff summary report for that meeting (refer to section III(e)), the Commission approved eight EGPs for the box crab program to be issued by the Department in order to ensure protection of the box crab resource and adequate allocation of landings for cost recovery. These permits were distributed according to fishing study regions, with three permits issued to fishermen operating north of Point Conception and five permits issued to fishermen operating south of Point Conception and are valid for 12 months starting April 1, 2019 with potential for annual renewal for up to three years (for a total of four years of permitted fishing).

Consequently, following the repeal of FGC Section 8606, new regulations pursuant to FGC Section 1022 need to be established in Title 14, CCR, to support the continuation of the box crab program before the EGPs expire on March 31, 2020. The proposed regulations will ensure that current research on a potential box crab fishery can continue while a larger programmatic rulemaking can be developed to build out an EFP program pursuant to FGC 1022.

The Department and the Commission will take a two-phased approach to fully implement FGC Section 1022. Department and Commission staff were concerned that public scoping would be limited to a one- to two-month window if a full build out of the EFP program were to be in place by April 1, 2020. This amount of time for public involvement in the development of a new program is insufficient. Therefore, it was decided to split the EFP program building into two phases. The first phase will produce a process for issuing EFPs for the continuation of the box crab program (the intent of this rulemaking), while the second phase will build in more time for public scoping to achieve a fully developed EFP program as envisioned by the legislature pursuant to FGC Section 1022.

Current Regulations

The eight existing EGPs that were approved by the Commission and issued by the Department in 2018 pursuant to FGC Section 8606 will expire on March 31, 2020. Since the repeal of FGC Section 8606, there are currently no regulations in place to enable the issuance of EFPs pursuant to FGC Section 1022 for the purpose of continuing the research on a potential box crab fishery. Under current law (FGC subdivision 1022(b)), the

Commission has the authority to establish regulations to implement an EFP program, including an expeditious process for Department review, public notice and comment, Commission approval, and prompt Department issuance of EFPs. The proposed regulations will be promulgated under this authority.

Proposed Regulations

The proposed regulations will establish a new Chapter 5.6, Experimental Fishing Permit program, containing new Section 90, Issuance of Experimental Fishing Permits; and additionally, establish new Section 704, Experimental Fishing Permits; Fees and Forms.

Add new Chapter 5.6, Title 14, CCR; Experimental Fishing Permit Program.

This regulatory proposal will add new Chapter 5.6, containing new Section 90. Regulations within Chapter 5.6 will primarily describe the overarching strategy to establish the EFP Program. This new Chapter is necessary to provide a coherent framework in regulations to implement the new EFP program, which will be established through the dual phase approach outlined above.

Add new Section 90, Title 14, CCR; Issuance of Experimental Fishing Permits.

The proposed regulations in new Section 90 will establish the process for issuing the new EFPs for the continuation of the box crab program approved by the Commission in 2018.

Subsection 90(a) allows the Department to issue EFPs to those applicants previously approved by the Commission in 2018 to receive an EGP pursuant to FGC Section 8606.

Subsection 90(a)(1) states that the permit will be issued as an “experimental fishing permit” pursuant to FGC Section 1022, and valid for a term of one year from April 1 through March 31.

Subsection 90(a)(2) requires applicants for an EFP to submit a written request to the Department at least 60 days prior to the expiration date of their current permit. This requirement will enable the Department to fulfill its obligations under subsection 90(a)(3) to review and determine that all applicants meet the Standard Terms and Special Conditions of the EFP and are thus qualified to receive an EFP.

Subsection 90(a)(3) states that each applicant must be found by the Department to be capable of complying with the Standard Terms and Special Conditions of the EFP to be eligible to receive an EFP.

Subsection 90(a)(3)(A) states that EFPs will be first issued to current holders of EGPs that were approved by the Commission in 2018 and who submitted a written request for issuance of an EFP pursuant to subsection 90(a)(2).

Subsection 90(a)(3)(B) states that if less than eight EFPs are issued, the Department may issue an EFP to another applicant previously approved by the Commission in 2018 for an EGP, so long as there are no more than eight valid permits at any one time. This provision

will enable the Department to maintain an adequate number of research participants should any one of the current permit holders drop out of the box crab program before the experimental research period is complete or is deemed ineligible to receive an EFP by the Department.

Subsection 90(a)(3)(C) states that failure to adhere to the Standard Terms and Special Conditions of the EFP, or violation of any fishing laws while operating under an EFP, is unlawful and may result in immediate suspension or denial of the request for issuance of an EFP.

Subsection 90(a)(4) requires the timely payment of the fee for the EFP as set forth in Section 704. Pursuant to FGC subdivision 1022(g), the fee is sufficient to fully recover, but not exceed, all reasonable implementation and administrative costs related to the box crab program (e.g. permit approval, management, and monitoring of the program).

Subsection 90(b)(1) establishes that Form DFW 1085 (New 08/01/2019) Experimental Fishing Permit Terms and Conditions will enumerate the Standard Terms applicable to all participants in the experimental box crab fishery.

Subsection 90(b)(2) requires that the permittee comply with the Special Conditions approved by the Commission and attached to Form DFW 1085. The Special Conditions of the experimental fishing permit will be consistent with the purpose of the experimental gear permit Special Conditions as approved by the Commission in 2018, and will allow for the continued operation of the experimental box crab fishery in a manner that is compliant with the requirements set forth in FGC subdivisions 1022(a)(1) and 1022(a)(2) relating to fishery management and the protection of marine resources.

Subsection 90(b)(2)(A) establishes that, based upon a recommendation from the Department, the Commission may approve the adoption, amendment, or repeal of the Special Conditions of the EFP as it deems necessary for research and the conservation and management of marine resources and the environment.

Subsection 90(b)(2)(B) requires the Department to inform permittees of pending changes to the Special Conditions of the EFP at least 30 days prior to making a recommendation to the Commission to consider such changes. This is necessary to make specific the criteria of the EFP and ensure that an EFP permit holder is aware of their obligations. Additionally, subsection 90(b)(2)(B) is necessary to ensure that a process is in place to properly notify permit holders in a timely manner and allows for public review and comment before the Commission considers any modifications to the Special Conditions of the EFP.

Subsection 90(c) clarifies that access to future permits, if a fishery is developed, is not implied by participation in the experimental fishing permit program. The specific provisions of any future fishery (if found viable) are not known at this time. If permits are to be issued in a new fishery it will be under conditions fair to all interested parties.

These provisions are necessary to establish a procedure to issue EFPs pursuant to FGC Section 1022. The proposed regulations will ensure that current EGP permit holders participating in the box crab program are properly permitted to continue to conduct the

experimental fishing research once the term of the EGPs expires on March 31, 2020. The proposed regulations are also necessary to maintain a sufficient number of participants in the box crab program if any of the eight box crab permits becomes available prior to the completion of the experimental research period. The establishment of Standard Terms and Special Conditions, and procedure for subsequent amendments to the Special Conditions, is necessary to ensure that the EFP program is compliant with the requirements of FGC subdivision 1022(a)(2) to ensure protection of marine resources. Owing to the experimental nature of this fishery program, the proposed regulations will enable the Commission, based upon the best available science and recommendations provided by the Department, to determine which Special Conditions of the EFP are necessary for protection of marine resources (pursuant to FGC subdivision 1022(a)(2)), and amend those Special Conditions in the future in response to new scientific information and Department recommendations.

Add new Section 704, Title 14, CCR; Experimental Fishing Permits; Fees and Forms.

Subsection 704(a)(1) will stipulate the box crab EFP fee pursuant to FGC subdivision 1022(g) that authorizes the Commission to charge a fee as necessary to fully recover, but not exceed, all reasonable implementation and administrative costs of the Department and Commission related to the EFP.

Subsection 704(a)(2) provides that Form DFW 1085 (New 08/01/2019) Experimental Fishing Permit Terms and Conditions will be incorporated by reference (see Attachment). The Standard Terms and Special Conditions of form DFW 1085 are outlined below and may be adjusted in the future as research data dictate (as per the procedure set forth in subsection 90(b)(2)(A)).

Subsection 704(b) states that the EFP fee is subject to an annual adjustment, pursuant to Section 699.

As discussed above, the box crab EFP program is a multi-year research collaboration developed and funded by the Department, the Ocean Protection Council, the Resources Legacy Fund, and interested commercial trap fishermen for the purpose of collecting biological information and exploring a new directed fishery for box crab. The Department has estimated the annual reasonable Department costs with administering and implementing this EFP program, including cost-sharing and participant contributions (Table 1). Several parameters were used to calculate the costs to the Department, including staff time, travel and meetings, and enforcement. Because the Department's Marine Region has management interest in investigating the feasibility of a box crab fishery, some of the cost of developing and managing the box crab EFP program would be shared by the Department by means of excluding the Marine Region's permanent staff time from the overall Department costs. The remaining annual cost of the EFP program to be shared by program participants (i.e., permit holders) amounts to \$35,902 (for eight box crab permits), which yields a final permit fee of \$4,487.75. This permit fee is specified in subsection 704(a)(1) of the proposed regulations and is subject to an annual adjustment pursuant to Section 699 (stated in subsection 704(b)). As mentioned above, the proposed regulations are necessary to recover all reasonable implementation and administrative costs relating to the box crab EFP, consistent with FGC subdivision 1022(g).

Table 1. Annual cost breakdown for the box crab experimental fishery permit.

Annual Department Costs¹ for 8 Box Crab Permits			
ENFORCEMENT	Hours	Rate (\$/hr)	Subtotal
Patrol Vessel	91	\$196	\$17,836
Overhead			\$4,337.72
Total			\$22,173.72
LICENSE & REVENUE BRANCH (LRB)			
Permit Administration	Hours	Rate (\$/hr)	Subtotal
Staff service analyst (SSA)	40	\$31.45	\$1,258
Program technician (PT)	2	\$23.15	\$46
Staff services manager (SSMI)	8	\$44.64	\$357
Staff services manager III (SSMIII)	4	\$54.45	\$218
Total Salary/Wages			\$1,879
Staff Benefits			\$991
Subtotal Personnel			\$2,870
Overhead			\$698.03
LRB Total			\$3,568
REGION 7 - MARINE			
	Hours	Rate (\$/hr)	total costs
Permanent Staff			
Senior Environmental Scientist (salary + benefits) ²	1,330	\$58.69	\$ 78,047
Temporary Staff			
Scientific Aid (Santa Barbara)	145	\$15.53	\$2,252
Scientific Aid (San Diego)	195	\$15.53	\$3,028
Temporary Staff Benefits			\$2,892
Subtotal Temp Help			\$8,172
Overhead			\$1,988
Temp Help Total			\$10,160
Total Annual Cost for 8 Permits			\$35,901.99
Cost per Permit³			\$4,487.75

Sources: California Department of Fish and Wildlife (Department) Law Enforcement, License and Revenue Branch, and Marine Region; 2018-19 California Department of Human Resources (CalHR) salary schedule, 2018-19 Department benefit and overhead rates.

Notes:

- ¹ In addition to Department costs, the box crab program is supported by grants from the Ocean Protection Council and the Resources Legacy Fund, the California Sea Grant, and National Oceanic and Atmospheric Administration (NOAA) Saltonstall-Kennedy Grant Program.
- ² As the Department's share of the cost, it will not be reimbursed for the Marine Region's permanent staff time to oversee the program through the receipt of the permit fee.
- ³ The permit fee is an annual cost-share amount for each program participant (i.e., permit holder). The box crab permit fee was derived from the Department costs (minus the Marine Region's salary and benefits for permanent staff) divided by the number of permits approved by the Commission and issued by the Department in December 2018 (i.e., eight permits).

Form DFW 1085 (New 08/01/2019), Experimental Fishing Permit Terms and Conditions

Subsection 704(a)(2) sets forth the compliance criteria for the EFP. The proposed regulations will incorporate by reference the Experimental Fishing Permit Terms and Conditions, form DFW 1085 (New 08/01/2019), that requires the following information:

- Name and address of the permittee,
- Name and address of a secondary permit operator,
- Vessel name and identification number,
- Description of the authorized fishing activity, and
- Standard Terms and Special Conditions that EFP holders will be subject to.

This information required on the form, and the Standard Terms and Special Conditions expressed there, is necessary to clearly identify and ensure that experimental fishing operations are conducted only on the vessel and by the individuals to which the EFP was issued and will assist in enforcement of this requirement.

The Standard Terms and Special Conditions are consistent with those used to issue EGPs previously approved by the Commission at its December 12, 2018 meeting, prior to the repeal of FGC Section 8606, which include the following:

STANDARD TERMS. These are terms of the EFP which are generally applicable to any fishery. These Standard Terms are necessary to ensure consistency with other state fishing laws and regulations and provide clarity by detailing the operating procedures and requirements for which all EFP permit holders must abide:

1. An Experimental Fishing Permit number will be provided by the License and Revenue Branch (LRB) for this activity, and it will be valid for a term of one year commencing on _____ and ending on _____.
2. The permit shall be operated only on the vessel named above. The permittee may designate up to one other permit operator who may also take the authorized species from the vessel named on this permit. Either the primary permittee or the secondary operator must be aboard the vessel, and both are responsible and accountable for meeting the requirements and limits of this permit.
3. Pursuant to FGC Section 7857(d), a valid copy of the original Department issued Automated License Data System permit shall be attached to a signed copy of this form and be on the vessel when activities are being conducted under the authority of this permit.
4. The permittee and any person who assists the permittee, must possess a valid commercial fishing license issued pursuant to FGC Section 7850, prior to engaging in any commercial fishing operations authorized by this permit.
5. The permittee shall possess a valid commercial boat registration issued pursuant to FGC Section 7881, for the vessel named above and display the Department Boat Registration numbers in plain sight on each side of the vessel.
6. The permittee and second operator must comply with all appropriate state and federal laws and regulations, including but not limited to those relating to protected species, minimum size limits, and seasons or areas closed to fishing that are not otherwise exempted by the permit (see special conditions).

7. The permittee and second operator shall cooperate with the Department by allowing personnel designated by the Department to board the fishing vessel operated by the permittee under this permit, to observe or inspect equipment, procedures, or catch, on any fishing trip for as long as the trip may last throughout the duration of the permit.
 - a. The vessel must display a current Coast Guard safety decal
 - b. The vessel must be capable of safely carrying an observer and provide that observer with accommodations equivalent to those provided to the captain and crew for both single and multi-day trips if multi-day trips are conducted.

SPECIAL CONDITIONS. These are conditions approved by the Commission specifically for the fishery proposed and attached to form DFW 1085. The Special Conditions are necessary to ensure that activities conducted under an EFP are consistent with FGC subdivisions 1022(a)(1) and 1022(a)(2), which direct the Commission to determine those Special Conditions necessary to protect marine resources and to ensure that activities conducted under an EFP are consistent with any applicable fishery management plan and the policies set forth in FGC Section 7050 relating to the management, conservation, and sustainable use of California's marine living resources.

It is not possible to predict all future aspects of any new fishery, technology, gear, or other subjects related to the experimental fishing permit. The purpose of the EFP is to discover the characteristics of experimental proposals while active on the water. The Commission may therefore adopt, amend, or repeal Special Conditions as it deems necessary for research and the conservation and management of marine resources and the environment with notice as required by subsections 90(b)(2)(A) and 90(b)(2)(B).

The following general categories of Special Conditions may be necessary to protect marine resources, fill research and data needs and ensure compliance with the purposes of the permit. These general categories are provided as examples of the types of Special Conditions that the Commission may adopt, amend, or repeal pursuant to the parameters set forth in subsection 90(b)(2)(A), and is not intended to be an exhaustive list:

- A. The amount and size of each species that can be harvested and/or landed during the term of the permit, including trip, annual or other harvest limitations.
- B. A citation of current state fishing laws and regulations from which the permit is exempted.
- C. The time(s) and place(s) where activities may be conducted.
- D. The gear type, design specifications, and amount that may be used by each person or vessel operating under the permit, and any other restrictions placed on the methods of gear use.
- E. Whether fishery observers, electronic equipment or both are to be carried on board vessels operating under the permit and any necessary conditions to provide for personnel safety.
- F. Data reporting requirements necessary to document fishing and research activities and established timeframes and formats for submission of the data to the department.
- G. Other Special Conditions as may be necessary to fill research and data needs and ensure compliance with the purposes of the permit.

(b) Goals and Benefits of the Regulation:

It is the policy of the State to ensure the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the state. The objectives of this policy include, but are not limited to, support and promote scientific research on marine ecosystems and their components to develop better information on which to base marine living resource management decisions, manage marine living resources on the basis of the best available scientific information and other relevant information that the Commission or Department possesses or receives, and to involve all interested parties, including, but not limited to, individuals from the sport and commercial fishing industries, aquaculture industries, coastal and ocean tourism and recreation industries, marine conservation organizations, local governments, marine scientists, and the public in marine living resource management decisions.

In April 2018, the Department determined that the harvest of all non-Cancer crabs, including box crab, is an emerging fishery. Since 2014, the Department landings data for box crab showed a rapid increase. To address the biological concerns and industry interest, a collaborative box crab program between the Department, academics, NGOs, and interested commercial trap fishermen utilizing the Commission-approved EGPs to collect data and evaluate the potential for a box crab targeted fishery was developed. The box crab program supports emerging fisheries as mandated by the Marine Life Management Act (FGC Section 7090) by providing the necessary information (i.e., biological information about the species and sustainable harvest levels) to determine if the box crab resource represents a viable new fishing opportunity.

However, with the repeal of FGC Section 8606, the box crab EGPs must come into compliance with new FGC Section 1022. The eight existing EGPs that were approved by the Commission and issued by the Department in 2018 pursuant to FGC Section 8606 will expire on March 31, 2020. Since the repeal of FGC Section 8606, there are currently no regulations in place to enable the issuance of EFPs pursuant to FGC Section 1022 for the purpose of continuing the research on a potential box crab fishery. Under current law (FGC subdivision 1022(b)), the Commission has the authority to establish regulations to implement an EFP program, including an expeditious process for Department review, public notice and comment, Commission approval, and prompt Department issuance of EFPs. The proposed regulations will implement the first phase of a statewide EFP program by ensuring regulations are in place to issue new box crab EFPs no later than April 1, 2020. The benefit of the proposed regulations will ensure that existing box crab permit holders can continue to collect data for management and test the viability of a box crab fishery, which will inform future management strategies for this emerging fishery.

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

Section 90:

Authority: Section 1022 Fish and Game Code.

Reference: Section 1022, Fish and Game Code.

Section 704:

Authority: Sections 713, 1022, and 1050, Fish and Game Code.

Reference: Sections 713, 1022, and 1050, Fish and Game Code.

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

None. As discussed above, the requirements to participate (e.g., electronic monitoring equipment, operating vessel capacity, trap design specifications, and buoy marking requirements) in the box crab EFP will be consistent with those requirements used to issue EGPs previously approved by the Commission at its December 12, 2018 meeting, prior to the repeal of FGC Section 8606.

The use of these specific technologies will ensure that existing box crab permit holders can continue to collect data for management and test the viability of a box crab fishery, which will inform future management strategies for this emerging fishery.

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

Staff summary for Agenda Item 11. Box Crab Experimental Gear Permit, December 12-13, 2018 Commission meeting.

Box Crab Experimental Gear Permit Terms and Conditions approved by the Commission and issued by the Department on December 20, 2018.

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

March 13, 2019, Teleconference with The Nature Conservancy (TNC) (the sponsor of AB 1573). The Department and Commission staff discussed with TNC the rulemaking process for the EFP program and public scoping opportunities.

March 20, 2019, Sacramento, California. The Department briefed the Marine Resources Committee (MRC) on the development of the EFP implementing regulations.

July 11, 2019, San Clemente, California. The Department updated the MRC on developing the EFP program in two phases to address the need to have regulations in place by April 1, 2020 for the continuance of experimental box crab research previously approved by the Commission in 2018 while ensuring there is sufficient time for meaningful public scoping and participation in the development of an EFP program pursuant to FGC Section 1022.

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change:

No alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

(b) No Change Alternative:

Under the no change alternative, the eight existing EGPs for the box crab program that were approved by the Commission and issued by the Department in 2018 pursuant to FGC Section 8606 will expire on March 31, 2020. Since the repeal of FGC Section 8606, there are currently no regulations in place to enable the issuance of EFPs pursuant to FGC Section 1022 to continue to support the collaborative research being conducted on the emerging box crab fishery as required by FGC Section 7090.

V. Mitigation Measures Required by Regulatory Action

The proposed regulatory action does not impose any mitigation measures.

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.

No businesses are expected to be impacted by the proposed regulations because the regulations proposed implement a process for the Commission to authorize the Department to issue EFPs and establishes the same fee for the EFPs as was established for the EGPs. The economic impact to the state is anticipated to be unchanged with no adverse impacts to California businesses or their ability to compete with businesses in other states.

(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 regulatory action will enable the continuation of an existing experimental fishery with no change.

The Commission anticipates indirect benefits to the health and welfare of California residents. Providing opportunities for a potential box crab fishery encourages consumption of a nutritious food. The Commission anticipates benefits to the state's environment as the EFP program would be a proactive approach to fisheries management which will ensure the protection of marine resources and foster sustainable fisheries and a healthy marine environment.

The Commission does not anticipate any benefits to worker safety because the proposed regulations would not have any impact on working conditions.

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

The proposed regulations are necessary to establish a process for the issuance of Experimental Fishing Permits to replace previously approved Experimental Gear Permits for the box crab program. The fee determination for the box crab experimental fishery permit is shown in Table 1 above. The annual fee amount of \$4,487.75 is essentially unchanged from

the fee for the experimental gear permits issued in December 2018. Thus, current box crab permit holders will not incur additional compliance costs associated with the proposed permit fee of \$4,487.75. Should a permit become available among the eight allowable at any one time, the new entrant would incur a new annual \$4,487.75 permit fee cost.

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

The Department has a duty to recover all reasonable implementation and administrative costs relating to the EFP program pursuant to Fish and Game Code subdivisions 1022(g) and 1050(e) (see Table 1). Subsection 704(a)(1) will stipulate the box crab EFP fee pursuant to FGC subdivision 1022(g) that authorizes the Commission to charge a fee as necessary to fully recover, but not exceed, all reasonable implementation and administrative costs of the Department and Commission related to the EFP. No costs/savings in Federal funding to the state are anticipated.

(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

The continuation of the experimental box crab fishery is anticipated to provide approximately \$254,826 in total economic output throughout the state marine economy. The state marine economy consists of two industry sectors: 1) fishing operations, transport, and support and; 2) seafood sales, and processing. These sectors include several different marine-related industries: commercial harvesters, seafood processors and dealers, seafood wholesalers and distributors, and retail seafood sales.

The total economic output is derived by first determining the ex-vessel value of the box crab fishery by multiplying the harvest quota of 36,000 pounds times the average market price of \$3.97 per pound. The additional value generated from the direct ex-vessel value is estimated with output multipliers to derive the indirect and induced impacts that are summed in the total economic output value.

Output multipliers reflect the incremental re-spending of a specific initial direct expenditure. Direct expenditures are received by supporting businesses who then spend all or a portion of that revenue on additional goods or services. The second-tier business spending is characterized as indirect impacts. Business spending on wages that is received by workers who then spend that income is characterized as induced impacts. Commercial harvest value thus multiplies throughout the economy with the indirect and induced impacts of the initial direct expenditure.

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

The Commission does not anticipate any impacts to the creation or elimination of jobs within the State. The proposed EFP program is not likely to have an impact on the number of commercial fishing businesses currently in operation.

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

The Commission does not anticipate any impacts on the creation of new businesses or the elimination of existing businesses within the state. There is no guarantee of a box crab fishery following the completion of the experimental period. If a future fishery is developed, access to or preferential treatment regarding future permits of any type is not implied by participation in the box crab program.

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

The Commission does not anticipate any significant impacts on the expansion of businesses currently doing business within the state as the result of the proposed regulations. The intent of the proposed regulations is to allow for a limited use of existing gear types to target box crab pursuant to FGC Section 1022, requiring monitoring and research. While the current incidental take (possession and landing) limit for box crab is no more than 25 pounds (lbs), the proposed regulations provide a process for issuance of EFPs which allows permit holders to take up to 36,000 lbs. annually. This is to provide an adequate allocation of landings for cost recovery. Furthermore, due to the minimal number of permits issued and the limited-term, experimental nature of fishing operations conducted under the EFPs, these permits are not expected to significantly change the level of commercial fishing activities in California or affect the expansion of businesses currently operating in the State.

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

The Commission anticipates indirect benefits to the health and welfare of California residents. Providing opportunities for a potential box crab fishery encourages consumption of a nutritious food.

(e) Benefits of the Regulation to Worker Safety:

The Commission does not anticipate any benefits to worker safety because the proposed regulations would not have any impact on working conditions.

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

The Commission anticipates benefits to the State's environment in the sustainable management of natural resources. It is the policy of the State to ensure the conservation, sustainable use, and where feasible, restoration of California's marine living resources for the benefit of all the citizens of the state (FGC subdivision 7050(b)). The proposed regulations will allow research into fishing practices that may improve the health, sustainability, and management of the box crab resource and prevent potential future unsustainable harvest.

Informative Digest/Policy Statement Overview

The Department of Fish and Wildlife (Department) is proposing to add new Chapter 5.6, Experimental Fishing Permit (EFP) Program, which will contain new Section 90, Issuance of Experimental Fishing Permits, in Title 14 of the California Code of Regulations (CCR). In addition, a new Section 704, Experimental Fishing Permits; Fees and Forms is proposed to be added to Title 14, CCR, relating to fees and forms associated with issuance of EFPs.

The proposed regulations, implement, in part, Assembly Bill (AB) 1573 (also known as the California Fisheries Innovation Act of 2018) which became effective on January 1, 2019. This legislative action repealed the experimental gear permit (EGP) provisions in Section 8606, Fish and Game Code (FGC), and added new FGC Section 1022, providing for an EFP program to facilitate fishery-related exploration and experimentation to inform fishery management.

Following the repeal of FGC Section 8606, new regulations pursuant to FGC Section 1022 need to be established in Title 14, CCR, to support the continuation of an experimental box crab fishery approved by the Commission in December 2018 before the currently issued EGPs expire on March 31, 2020. The proposed regulations will ensure that current research on a potential box crab fishery can continue while a larger programmatic rulemaking can be developed to build out an EFP program pursuant to FGC 1022.

The proposed regulations will establish a new Chapter 5.6, Experimental Fishing Permit Program, containing new Section 90, Issuance of Experimental Fishing Permits; and additionally, establish new Section 704, Experimental Fishing Permits; Fees and Forms, within Title 14, CCR. The proposed regulations in Chapter 5.6, Section 90, Title 14, CCR will primarily describe the overarching strategy to establish the EFP program and provide a coherent framework in regulations to implement the EFP program.

The proposed regulations in new Section 90, Title 14, CCR will establish the process for issuing EFPs to those applicants previously approved by the Commission in 2018 to receive a box crab EGP. Specifically, Section 90 would allow for the following:

- The Commission may authorize the Department to issue experimental fishing permits to any applicant approved by the Commission in the year 2018 to receive an experimental gear permit pursuant to Fish and Game Code 8606 (repealed, 2018).
- The applicant shall submit a written request for issuance of an EFP at least 60 days prior to the expiration date of their current permit.
- No more than eight valid EFPs will be issued at any one time.
- The Commission may establish Standard Terms applicable to all fishery participants.
- The Commission may approve the adoption, amendment, or repeal of Special Conditions unique to the experimental fishery set forth in form DFW 1085 as it deems necessary for research and the conservation and management of marine resources and the environment.
- The department shall notify a permittee at least 30 days before recommending a change to the Special Conditions of the EFP.
- Access to future permits, if a fishery is developed, is not implied by participation in the EFP program.

The proposed regulations in Section 704 will stipulate the box crab EFP fee pursuant to FGC subdivision 1022(g) that authorizes the Commission to charge a fee as necessary to fully recover, but not exceed, all reasonable implementation and administrative costs of the Department and Commission related to the EFP. The EFP permit fee will be established as \$4,487.75.

Section 704 will also incorporate by reference the Experimental Fishing Permit Terms and Conditions Form DFW 1085 (New 08/01/2019), which identifies the person(s) and vessel authorized to conduct activities under the EFP and specifies the Standard Terms and Special Conditions to which EFP permit holders will be subject.

Benefits of the Regulations

It is the policy of the State to ensure the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the state. The objectives of this policy include, but are not limited to, supporting and promoting scientific research on marine ecosystems and their components to develop better information on which to base marine living resource management decisions, and managing marine living resources on the basis of the best available scientific information and other relevant information that the Commission or Department possesses or receives.

The benefit of the proposed regulations will ensure that existing box crab permit holders can continue to collect data for management and test the viability of a box crab fishery, which will inform future management strategies for this emerging fishery.

Consistency and Compatibility with Existing Regulations

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 review, approval, and issuance of experimental fishing permits that authorize commercial or recreational marine fishing activity that is otherwise prohibited by law (FGC Section 1022). No other State agency has the authority to promulgate experimental fishing permit regulations. 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 for any regulations regarding the review, approval, and issuance of experimental fishing permits and has found no such regulation; therefore, the Commission has concluded that the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

Proposed Regulatory Language

Chapter 5.6, of Subdivision 1. Fish, Amphibians and Reptiles, Title 14, CCR, is added to read:

Chapter 5.6, Experimental Fishing Permit Program.

§Section 90. Issuance of Experimental Fishing Permits.

- (a) The commission may authorize the department to issue experimental fishing permits to any applicant approved by the commission in the year 2018 to receive an experimental gear permit pursuant to Fish and Game Code 8606 (repealed, 2018), under the following requirements and restrictions:
- (1) Permits will be issued as experimental fishing permits pursuant to Fish and Game Code 1022, and are valid for a term of one year, from April 1, through March 31;
 - (2) The applicant shall submit a written request to the department for issuance of an experimental fishing permit at least 60 days prior to the expiration date of their current permit.
 - (3) Upon review and determination by the department that the applicant can meet the standard terms and special conditions of the experimental fishing permit, as set forth in subsection (b):
 - (A) Experimental fishing permits will be first issued by the department to those applicants who received an experimental gear permit from the department in the year 2018 and submitted a written request for permit issuance pursuant to subsection (a)(2).
 - (B) Whenever there are less than eight valid permits issued, the department may issue experimental fishing permits to another applicant approved by the commission in 2018 for an experimental gear permit, so long as there are no more than eight valid permits at any one time.
 - (C) It is unlawful to operate under an experimental fishing permit in violation of the standard terms and special conditions as set forth in subsection (b), or in violation of applicable laws and shall result in immediate suspension or denial of issuance of an experimental fishing permit at the discretion of the department or the commission.
 - (4) Each year that the experimental fishing permit is issued, the applicant for the experimental fishing permit shall submit the fee, as specified in Section 704, to the department's license and revenue branch. The fee shall be received by the license and revenue branch prior to March 1 of each year, and if the fee is mailed, it must be postmarked prior to March 1.
- (b) Permit Standard Terms and Special Conditions

- (1) The permittee shall comply with all standard terms set forth in Experimental Fishing Permit Terms and Conditions, form DFW 1085 (subsection 704(a)(2)).
- (2) The permittee shall comply with any special conditions approved by the commission and attached to form DFW 1085.
 - (A) Based upon a recommendation from the department, the commission may approve the adoption, amendment, or repeal of special conditions set forth in form DFW 1085 as it deems necessary for research and the conservation and management of marine resources and the environment.
 - (B) The department shall notify a permittee at least 30 days before recommending an amendment to the special conditions of the experimental fishing permit.
- (c) Access to future permits, if a fishery is developed, is not implied by participation in the experimental fishing permit program.

Note: Authority cited: Section 1022, Fish and Game Code. Reference: Section 1022, Fish and Game Code.

Proposed Regulatory Language

Section 704, Title 14, CCR is added to read:

Section 704. Experimental Fishing Permits; Fees and Forms

<u>(a) Permits/Forms</u>	<u>Permit Fees (US\$)</u>
<u>(1) Box Crab Experimental Fishing Permit</u>	<u>\$4,487.75</u>
<u>(2) Experimental Fishing Permit Terms and Conditions, DFW 1085 (New 08/01/2019), incorporated by reference herein.</u>	

(b) Pursuant to the provisions of Section 699, Title 14, the department shall annually adjust the fees of all licenses, stamps, permits, tags, or other entitlements required by regulations set forth in this section.

Note: Authority cited: Sections 713, 1022, and 1050, Fish and Game Code. Reference: Sections 713, 1022, and 1050, Fish and Game Code.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME Fish and Game Commission	CONTACT PERSON Margaret Duncan margaret.duncan@	EMAIL ADDRESS wildlife.ca.gov	TELEPHONE NUMBER 916 653-4674
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Add Ch. 5.6, Section 90; and Add Section 704, Title 14, CCR, Re: Experimental Fishing Permit Program (Phase 1)			NOTICE FILE NUMBER Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|--|---|
| <input checked="" type="checkbox"/> a. Impacts business and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input checked="" type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input type="checkbox"/> c. Impacts jobs or occupations | <input type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input type="checkbox"/> h. None of the above (Explain below): |

*If any box in Items 1 a through g is checked, complete this Economic Impact Statement.
If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.*

2. The **Fish and Game Commission** estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

- ☒ Below \$10 million
☐ Between \$10 and \$25 million
☐ Between \$25 and \$50 million
☐ Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a [Standardized Regulatory Impact Assessment](#) as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: 8

Describe the types of businesses (Include nonprofits): Commercial box crab permit holders

Enter the number or percentage of total businesses impacted that are small businesses: 100%

4. Enter the number of businesses that will be created: 0 eliminated: 0

Explain: 8 permit holders are currently active in this experimental fishery & no more than 8 valid permits will be allowed at any one time

5. Indicate the geographic extent of impacts: ☐ Statewide
☒ Local or regional (List areas): CA marine waters north and south of Point Conception

6. Enter the number of jobs created: 0 and eliminated: 0

Describe the types of jobs or occupations impacted: N/A

7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here? ☐ YES ☒ NO

If YES, explain briefly: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)**B. ESTIMATED COSTS** *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ 35,902
- a. Initial costs for a small business: \$ 4,487.75 Annual ongoing costs: \$ 4,487.75 Years: 1
- b. Initial costs for a typical business: \$ 4,487.75 Annual ongoing costs: \$ 4,487.75 Years: 1
- c. Initial costs for an individual: \$ N/A Annual ongoing costs: \$ N/A Years: 1
- d. Describe other economic costs that may occur: This regulatory action enables the continuation of an existing experimental fishery for eight permit holders.
2. If multiple industries are impacted, enter the share of total costs for each industry: N/A
3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* \$ N/A
4. Will this regulation directly impact housing costs? ☐ YES ☒ NO
If YES, enter the annual dollar cost per housing unit: \$ _____
Number of units: _____
5. Are there comparable Federal regulations? ☐ YES ☒ NO
Explain the need for State regulation given the existence or absence of Federal regulations: Fish and Game Code Section 7090 and Section 1022
Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ N/A

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: The proposed regulations will ensure that existing box crab permit holders can continue to collect data to enable the evaluation of the viability of a box crab fishery that will inform future management strategies for this emerging fishery.
2. Are the benefits the result of: ☒ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?
Explain: CA Assembly Bill (AB) 1573, California Fisheries Innovation Act of 2018 and Fish and Game Code Section 1022
3. What are the total statewide benefits from this regulation over its lifetime? \$ 254,826 / year
4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: None anticipated

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: No alternatives were identified by or brought to the attention of the Commission staff that would have the same desired regulatory effect.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ 254,826 Cost: \$ 35,902

Alternative 1: Benefit: \$ N/A Cost: \$ N/A

Alternative 2: Benefit: \$ N/A Cost: \$ N/A

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives:

This regulatory action enables the continuation of an existing experimental fishery.

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs?

☐ YES☒ NOExplain: No new technologies or equipment are specified with this regulatory action.**E. MAJOR REGULATIONS** *Include calculations and assumptions in the rulemaking record.*

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises **exceed \$10 million?** ☐ YES ☐ NO***If YES, complete E2. and E3******If NO, skip to E4***

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

☐ YES☒ NO

If YES, agencies are required to submit a [Standardized Regulatory Impact Assessment \(SRIA\)](#) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: _____

The incentive for innovation in products, materials or processes: _____

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT**A. FISCAL EFFECT ON LOCAL GOVERNMENT** *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

- ☐ 1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

- ☐ a. Funding provided in _____
Budget Act of _____ or Chapter _____, Statutes of _____

- ☐ b. Funding will be requested in the Governor's Budget Act of _____
Fiscal Year: _____

- ☐ 2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

- ☐ a. Implements the Federal mandate contained in _____
- ☐ b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

- ☐ c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

- ☐ d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

- ☐ e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

- ☐ f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

- ☐ g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

- ☐ 3. Annual Savings. (approximate)

\$ _____

- ☐ 4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

- ☒ 5. No fiscal impact exists. This regulation does not affect any local entity or program.

- ☐ 6. Other. Explain _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT (CONTINUED)**B. FISCAL EFFECT ON STATE GOVERNMENT** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

It is anticipated that State agencies will:☐ a. Absorb these additional costs within their existing budgets and resources.☐ b. Increase the currently authorized budget level for the _____ Fiscal Year☐ 2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

☐ 3. No fiscal impact exists. This regulation does not affect any State agency or program.☒ 4. Other. Explain The establishment of a box crab permit fee of \$4,487.75 is anticipated to enable the CA Department of Fish and Wildlife to collect revenue for up to eight permits per year over the next three years. Estimate: \$4,487.75 x 8 permits = \$35,902 per year X 3 years = \$107,706**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

☐ 2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

☒ 3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.☐ 4. Other. Explain _____

FISCAL OFFICER SIGNATURE



Original signature on file 7/16/19

DATE

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY



Original signature on file 7/23/19

DATE

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER



DATE

STD. 399 Addendum

Add Chapter 5.6, Section 90; and Add Section 704,
Title 14, California Code of Regulations
Re: Experimental Fishing Permit Program (Phase 1)

Economic Impact Statement

C. Estimated Benefits

Answer 3:

The continuation of the experimental box crab fishery is anticipated to provide approximately \$254,826 in total economic output throughout the state marine economy. The state marine economy consists of two industry sectors: 1) fishing operations, transport, and support and; 2) seafood sales, and processing. These sectors include several different marine-related industries: commercial harvesters, seafood processors and dealers, seafood wholesalers and distributors, and retail seafood sales.

The total economic output is derived by first determining the ex-vessel value of the box crab fishery by multiplying the harvest quota of 36,000 pounds times the average market price of \$3.97 per pound. The additional value generated from the direct ex-vessel value is estimated with output multipliers to derive the indirect and induced impacts that are summed in the total economic output value.

Output multipliers reflect the incremental re-spending of a specific initial direct expenditure. Direct expenditures are received by supporting businesses who then spend all or a portion of that revenue on additional goods or services. The second-tier business spending is characterized as indirect impacts. Business spending on wages that is received by workers who then spend that income is characterized as induced impacts. Commercial harvest value thus multiplies throughout the economy with the indirect and induced impacts of the initial direct expenditure.

Fiscal Impact Statement

A. Fiscal Effect on Local Government

Answer 5. *No fiscal impact exists. This regulation does not affect any local entity or program.*

B. Fiscal Effect on State Government

Answer 4. Other.

The establishment of a box crab experimental fishing permit (EFP) fee of \$4,487.75 is anticipated to enable the California Department of Fish and Wildlife (Department) to collect revenue for up to eight permits per year over the next three fiscal years from 2019/20, 2020/21 and 2021/22.

Department Revenue Estimate: \$4,487.75 x 8 permits = \$35,902 per year x 3 years = \$107,706 Total

Determination of Program Fees.

The Department has a duty to recover all reasonable implementation and administrative costs pursuant to Fish and Game Code subdivisions 1022(g) and 1050(e) (see Table 1). Section 704, Title 14, CCR will stipulate the box crab EFP fee pursuant to Fish and Game Code subdivision 1022(g) that authorizes the Commission to charge a fee as necessary to fully recover, but not exceed, all reasonable implementation and administrative costs of the Department and Commission related to the EFP.

The box crab EFP program is a multi-year research collaboration developed and funded by the Department, California Ocean Protection Council, Resources Legacy Fund, and interested commercial trap fishermen for the purpose of collecting biological information and exploring a new directed fishery for box crab. The Department has estimated the annual reasonable Department costs related with administering and implementing this EFP program, including cost-sharing and participant contributions (Table 1). Several parameters were used to calculate the costs to the Department, including staff time, travel and meetings, and enforcement. Because the Department's Marine Region has management interest in investigating the feasibility of a box crab fishery, some of the cost of developing and managing the box crab EFP program would be shared by the Department by means of excluding the Marine Region's permanent staff time from the overall Department costs as shown in Table 1. The remaining annual cost of the EFP program to be shared by program participants (i.e., permit holders) amounts to \$35,902 (for eight box crab permits), which yields a final permit fee of \$4,487.75. This permit fee is specified in subsection 704(a)(1), Title 14, CCR of the proposed regulations, and is subject to an annual adjustment pursuant to Fish and Game Code Section 699 (stated in subsection 704(b), Title 14, CCR of the proposed regulations). The proposed regulations are necessary to recover all reasonable implementation and administrative costs relating to the box crab EFP, consistent with Fish and Game Code subdivision 1022(g).

Table 1. Box Crab Permit Fee Determination

Annual Department Costs¹ for 8 Box Crab Permits			
ENFORCEMENT	Hours	Rate (\$/hr)	Subtotal
Patrol Vessel	91	\$196	\$17,836
Overhead			\$4,337.72
Total			\$22,173.72
LICENSE & REVENUE BRANCH (LRB)			
Permit Administration	Hours	Rate (\$/hr)	Subtotal
Staff service analyst (SSA)	40	\$31.45	\$1,258
Program technician (PT)	2	\$23.15	\$46
Staff services manager (SSMI)	8	\$44.64	\$357
Staff services manager III (SSMIII)	4	\$54.45	\$218
Total Salary/Wages			\$1,879
Staff Benefits			\$991
Subtotal Personnel			\$2,870
Overhead			\$698.03
LRB Total			\$3,568
REGION 7 - MARINE	Hours	Rate (\$/hr)	total costs
Permanent Staff			
Senior Environmental Scientist (salary + benefits) ²	1,330	\$58.69	\$ 78,047
Temporary Staff			
Scientific Aid (Santa Barbara)	145	\$15.53	\$2,252
Scientific Aid (San Diego)	195	\$15.53	\$3,028
Temporary Staff Benefits			\$2,892
Subtotal Temp Help			\$8,172
Overhead			\$1,988
Temp Help Total			\$10,160
Total Annual Cost for 8 Permits (less Region 7 permanent staff)			\$35,901.99
Cost per Permit³			\$4,487.75

Sources: California Department of Fish and Wildlife (Department) Law Enforcement, License and Revenue Branch, and Marine Region; 2018-19 California Department of Human Resources salary schedule, 2018-19 Department benefit and overhead rates.

Notes:

¹ In addition to Department costs, the box crab EFP program is supported by grants from the California Ocean Protection Council, Resources Legacy Fund, California Sea Grant, and National Oceanic and Atmospheric Administration Saltonstall-Kennedy Grant Program.

² As the Department's share of the cost, it will not be reimbursed for the Marine Region's permanent staff time to oversee the EFP program through the receipt of the permit fee.

³ The permit fee is an annual cost-share amount for each EFP program participant (i.e., permit holder). The box crab permit fee was derived from the Department costs (minus the Marine Region's salary and benefits for permanent staff) divided by the number of permits approved by the Commission and issued by the Department in December 2018 (i.e., eight permits).

C. Fiscal Effect on Federal Funding of State Programs

Answer 3. *No fiscal impact exists. This regulation does not affect any federally funded State agency or program.*



Experimental Fishing Permit No. _____

EXPERIMENTAL FISHING PERMIT TERMS AND CONDITIONS

Pursuant to California Fish and Game Code (FGC) Section 1022 and Section 90, Title 14, California Code of Regulations (CCR), the Permitholder is authorized to conduct experimental fishing activities according to the authorizations, Standard Terms, Special Conditions and restrictions listed on the Experimental Fishing Permit (EFP) approved by the Fish and Game Commission (Commission) and issued by the California Department of Fish and Wildlife (Department). These Standard Terms shall apply to all persons or vessels conducting activities under an EFP.

Permittee Name: _____

Permittee Address: _____

Second Operator Name: _____

Second Operator Address: _____

Vessel Name and ID # _____

Description of Authorized Activity:

STANDARD TERMS

1. An Experimental Fishing Permit number will be provided by the License and Revenue Branch (LRB) for this activity, and it will be valid for a term of one year commencing on _____ and ending on _____.
2. The permit shall be operated only on the vessel named above. The permittee may designate up to one other permit operator who may also take the authorized species from the vessel named on this permit. Either the primary permittee or the secondary operator must be aboard the vessel, and both are responsible and accountable for meeting the requirements and limits of this permit.
3. Pursuant to FGC Section 7857(d), a valid copy of the original Department issued Automated License Data System permit shall be attached to a signed copy of this form and be on the vessel when activities are being conducted under the authority of this permit.
4. The permittee and any person who assists the permittee, must possess a valid commercial fishing license issued pursuant to FGC Section 7850, prior to engaging in any commercial fishing operations authorized by this permit.
5. The permittee shall possess a valid commercial boat registration issued pursuant to FGC Section 7881, for the vessel named above and display the Department Boat Registration numbers in plain sight on each side of the vessel.



6. The permittee and second operator must comply with all appropriate state and federal laws and regulations, including but not limited to those relating to protected species, minimum size limits, and seasons or areas closed to fishing that are not otherwise exempted by the permit (see special conditions).
7. The permittee and second operator shall cooperate with the Department by allowing personnel designated by the Department to board the fishing vessel operated by the permittee under this permit, to observe or inspect equipment, procedures, or catch, on any fishing trip for as long as the trip may last throughout the duration of the permit.
 - a. The vessel must display a current Coast Guard safety decal.
 - b. The vessel must be capable of safely carrying an observer and provide that observer with accommodations equivalent to those provided to the captain and crew for both single and multi-day trips if multi-day trips are conducted.

Special Conditions for Experimental Fishing Permits may be attached to this permit. The Commission may adopt, amend, or repeal Special Conditions as it deems necessary for research and the conservation and management of marine resources and the environment, as set forth in subsection 90(b)(2)(A), Title 14, CCR.

The permit is not valid until the permittee has certified by their signature below that they have read and understand the Standard Terms and Special Conditions of the permit; paid the fee per Section 704; received a Permit Number; and has returned one signed copy to the Department.

I (we) have read, understand and agree to abide by all Standard Terms and Special Conditions of this permit.

Permittee Signature

Date

Second Operator Signature (if applicable) Date

Received by LRB Fee \$_____ Experimental Fishing Permit No. _____

By: LRB _____ Date _____



Special Conditions Approved by the Commission

Revision Date: _____

1. Participants may fish for box crab and rock crab, Dungeness crab or spot prawn within the same trip if appropriate permits for retained species are in place. Adherence to all other regulations regarding the take of these species is required. Brown box crab and lobster shall not be targeted or possessed within the same trip. For research purposes, the Department may provide written authorization for the landing of king crab caught in box crab traps above the 25-pound landing restriction specified in section 126 of Title 14. All other species caught in box crab traps shall be returned to the water immediately and not used as bait.
2. This permit authorizes up to 36,000 pounds of brown box crab to be landed annually by the vessel named in this permit. If this limit is reached prior to one year from the date fishing is initiated, all targeting of box crab must cease until the permit expires and is subsequently renewed.
3. All box crab must have a minimum width of 5 $\frac{3}{4}$ inches across the widest part of the carapace including spines to be retained, possessed and landed unless authorized in writing by the Department to retain smaller crab for research purposes.
4. No processing or packaging of box crab may take place until weighed, recorded on a landing receipt, and a landing receipt is provided to the permittee by the receiver.
5. Permittees must engage in a minimum of 50 active fishing days per year targeting box crab. Active fishing days include days when box crab traps are pulled and do not include days when only transit or the setting of traps takes place.
6. Pursuant to FGC Section 9004, permittees must service their traps at intervals no more than 96 hours unless otherwise authorized in writing by the Department. Exceptions may be made for weather or other safety concerns.
7. Traps shall meet the following design specifications:
 - a. Traps may be any shape but must have a diameter, length or width no larger than 6 feet.
 - b. Traps must have at least one round escape port no smaller than 4 inches in diameter.
 - c. Traps made of wire mesh must have mesh measurements 1.5 x 3.5 inches or larger.
 - d. Escape ports must be in the top or side of the trap. If both are in the side, at least one must be located so that at least one half of the opening is in the upper half of the trap.
 - e. Traps must include at least one destruct device to be specified by the Department.
 - f. The Department may allow and/or request deployment of specific trap designs for research purposes.
8. Buoy markings shall comply with requirements specified in California Code of Regulations, Title 14, Section 180.5 marking the letter "R" on buoys used for box crab. Additionally, the Department may require a tag of designated shape, color and size, to be provided by the permittee, to be fixed to the line immediately below the buoy.



State of California – Department of Fish and Wildlife
EXPERIMENTAL FISHING PERMIT TERMS AND CONDITIONS
DFW 1085 (NEW 08/01/19)

9. Pop-up buoys shall not be used.
10. A maximum of 75 traps may be fished at one time unless additional traps are authorized in writing by the Department for research purposes.
11. If requested by the Department, permittees must move fishing gear in response to circumstances including, but not limited to, gear conflicts with other fishermen and Naval operations.
12. The permittee shall allow Department designated technicians to install electronic fishery monitoring hardware on their vessel and comply with all associated procedures for operation, maintenance, and data sharing. No fishing for box crab may take place unless a functioning electronic monitoring system is installed and used as specified by the Department. The electronic monitoring must remain active at all times when the vessel is in use through the duration of the project.
13. The permittee shall document all fishing activities using a logbook provided by the Department. Any additional information requested by the Department shall be provided by the permittee. Failure to keep or submit required records of fishing activity may result in revocation or suspension (including non-renewal) of the license or permit for the taking of all fish or the particular species for which the records are required.
14. The permittee shall ensure a landing receipt is submitted using E-Tix within 24 hours following a landing of box crab. Use of E-Tix is described in the California Code of Regulations, Title 14, Section 197.
15. The permittee shall participate in all requested research data collection activities including but not limited to:
 - a. Intensive fishing within a designated area.
 - b. Trap survey monitoring catch per unit effort with varying levels of trap spacing along strings.
 - c. Tag-recapture study.
 - d. Crab collections.
 - e. Logbook data collection.
16. The permittee must follow the best practices for avoiding whale entanglement described in the attached guide. This includes fishing gear and incident reporting requirements.
17. The permittee and any person who assists the permittee, shall possess a valid general trap permit issued pursuant to FGC Section 9001, prior to engaging in any fishing operations authorized by this permit.
18. Cooperation with domoic acid testing is required by providing samples to the California Department of Public Health when requested.



For background purposes only.

December 20, 2018

EXPERIMENTAL GEAR PERMIT TERMS AND CONDITIONS NUMBER X-####

In accordance with action taken by the California Fish and Game Commission on December 12, 2018, and pursuant to the provisions of Fish and Game Code (FGC) Section 8606, permission is hereby granted to:

Permittee Name: _____
Permittee Address: _____
Second Operator Name: _____
Second Operator Address: _____
Vessel Name and ID # _____

hereinafter called the permittee, to harvest brown box crabs (*Lopholithodes foraminatus*) (box crab) for commercial purposes. This document must be attached to an Experimental Gear Permit (Permit) to be issued by the California Department of Fish and Wildlife's (Department's) License and Revenue Branch (LRB). The gear may only be used under the following conditions:

A. GENERAL TERMS AND CONDITIONS:

1. Pursuant to FGC Section 8606(a)(2), an Experimental Gear Permit number will be provided by LRB for this activity, and it will be valid for a term of one year commencing on April 1, 2019 and ending on March 31, 2020.
2. This permit shall be operated only on the vessel named above. The Permittee may designate up to one other permit operator who may also harvest box crab from the vessel named above. Either the primary permittee or the secondary operator must be aboard the vessel and both are responsible and accountable for meeting the requirements and limits of this permit and all fishing operations conducted under the terms of this permit.
3. Pursuant to FGC Section 7857(d), a copy of the original Department issued Automated License Data Systems license and permit and the signed Terms and Conditions must be on the commercial fishing vessel at all times when activities are being conducted under the authority of this permit.
4. The permittee and any person who assists the permittee, must possess a valid commercial fishing license issued pursuant to FGC Section 7850, prior to engaging in any fishing operations which are authorized by this permit.
5. The permittee and any person who assists the permittee, shall possess a valid general trap permit issued pursuant to FGC Section 9001, prior to engaging in any fishing operations authorized by this permit.

Conserving California's Wildlife Since 1870

6. The permittee must possess a valid commercial boat registration issued pursuant to FGC Section 7881, for the vessel named above and must display the Department Boat Registration numbers in plain sight on each side of the vessel.
7. The permittee must comply with all appropriate state and federal laws and regulations, including but not limited to those relating to protected species, minimum size limits, and seasons or areas closed to fishing.
8. The permittee shall cooperate with the Department by allowing personnel designated by the Department to board the commercial fishing vessel operated by the permittee under this permit, to observe or inspect equipment, procedures, or fish and crabs on any fishing trip for as long as the trip may last throughout the duration of the permit.
 - a. The vessel must display a current Coast Guard safety decal.
 - b. The vessel must be capable of safely carrying an observer and provide that observer with accommodations equivalent to those provided to the captain and crew for both single and multi-day trips if multi-day trips are conducted.

SPECIAL CONDITIONS:

1. The permittee must follow the best practices for avoiding whale entanglement described in the attached guide. This includes fishing gear and incident reporting requirements.
2. The permittee shall document all fishing activities using a logbook provided by the Department. Any additional information requested by the Department shall be provided by the permittee. Failure to keep or submit required records of fishing activity may result in revocation or suspension (including non-renewal) of the license or permit for the taking of all fish or the particular species for which the records are required.
3. The permittee shall submit funds in the amount of \$4,500 by December 31, 2018 to cover a portion of the Department's cost for permit approval and monitoring and management of the program.
4. The permittee shall allow Department designated technicians to install electronic fishery monitoring hardware on their vessel and comply with all associated procedures for operation, maintenance, and data sharing. No fishing for box crab may take place unless a functioning electronic monitoring system is installed and used as specified by the Department. The electronic monitoring must remain active at all times when the vessel is in use through the duration of the project.
5. Participants may fish for box crab and rock crab, Dungeness crab or spot prawn within the same trip if appropriate permits for retained species are in place. Adherence to all other regulations regarding the take of these species is required. Brown box crab and lobster shall not be targeted or possessed within the same trip. For research purposes, the Department may provide written authorization for the landing of king crab caught in box crab traps above the 25-pound landing restriction specified in section 126 of Title 14. All other species caught in box crab traps shall be returned to the water immediately and not used as bait.

6. This permit authorizes up to 36,000 pounds of brown box crab to be landed annually by the vessel named in this permit. If this limit is reached prior to one year from the date fishing is initiated, all targeting of box crab must cease until the permit expires and is subsequently renewed.
7. The permittee shall ensure a landing receipt is submitted using E-Tix within 24 hours following a landing of box crab. Use of E-Tix is described in the California Code of Regulations, Title 14, Section 197.
8. The permittee shall participate in all requested research data collection activities including but not limited to:
 - a. Intensive fishing within a designated area
 - b. Trap survey monitoring catch per unit effort with varying levels of trap spacing along strings
 - c. Tag-recapture study
 - d. Crab collections
 - e. Logbook data collection
9. All box crab must have a minimum width of 5 $\frac{3}{4}$ inches across the widest part of the carapace including spines to be retained, possessed and landed unless authorized in writing by the Department to retain smaller crab for research purposes.
10. Pursuant to FGC Section 9004, permittees must service their traps at intervals no more than 96 hours unless otherwise authorized in writing by the Department. Exceptions may be made for weather or other safety concerns.
11. Traps shall meet the following design specifications:
 - a. Traps may be any shape but must have a diameter, length or width no larger than 6 feet
 - b. Traps must have at least one round escape port no smaller than 4 inches in diameter
 - c. Traps made of wire mesh must have mesh measurements 1.5 x 3.5 inches or larger.
 - d. Escape ports must be in the top or side of the trap. If both are in the side, at least one must be located so that at least one half of the opening is in the upper half of the trap.
 - e. Traps must include at least one destruct device to be specified by the Department.
 - f. The Department may allow and/or request deployment of specific trap designs for research purposes.
12. Buoy markings shall comply with requirements specified in California Code of Regulations, Title 14, Section 122.1 (b) except the letter "R" will replace the letter "P" on buoys used for box crab. Additionally, the Department may require a tag of designated shape, color and size, to be provided by the permittee, to be fixed to the line immediately below the buoy.
13. Pop-up buoys shall not be used.
14. A maximum of 75 traps may be fished at one time unless additional traps are authorized in writing by the Department for research purposes.

15. Cooperation with domoic acid testing is required by providing samples to the California Department of Public Health when requested.
16. If requested by the Department, permittees must move fishing gear in response to circumstances including, but not limited to, gear conflicts with other fishermen and Naval operations.
17. Permittees must engage in a minimum of 50 active fishing days per year targeting box crab. Active fishing days include days when box crab traps are pulled and do not include days when only transit or the setting of traps takes place.
18. No processing or packaging of box crab may take place until weighed, recorded on a landing receipt, and a landing receipt is provided to the permittee by the receiver.
19. Access to future permits, if a fishery is developed, is not implied by participation in the experimental permit.

Failure to adhere to the terms of the permit or violation of any laws while operating under the permit may result in immediate suspension or denial of renewal request of the box crab experimental gear permit at the discretion of the Department.

This permit is not valid until the permittee has certified by their signature below that they have read and understand the terms of the permit and has returned one signed copy to the Department.

Joshua Morgan, Chief
License and Revenue Branch

I (we) have read, understand and agree to abide by all terms and conditions of this permit

PERMITTEE SIGNATURE

DATE

SECOND OPERATOR SIGNATURE

DATE

March 4, 2019

Page Five

bc: Melissa Miller-Henson, Acting Executive Director
Fish and Game Commission
Melissa.Miller-Henson@fgc.ca.gov

Craig Shuman, D. Env. Regional Manager
Marine Region
Craig.Shuman@wildlife.ca.gov

Mike Stefanak, Assistant Chief
Law Enforcement Division
Mike.Stefanak@wildlife.ca.gov

Robert Puccinelli, Captain
Law Enforcement Division
Robert.Puccinelli@wildlife.ca.gov

Julia Coates, Environmental Scientist
Marine Region
Julia.Coates@wildlife.ca.gov

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk

County of: N/A

From: (Public Agency): CA Fish and Game Commission
PO Box 944209
Sacramento, CA 94244-2090

(Address)

Project Title: Add Section 90 and 704, T14, CCR, Experimental Fishing Permit Program (Phase 1)

Project Applicant: N/A

Project Location - Specific:

North and south of Point Conception.

Project Location - City: N/A

Project Location - County: N/A

Description of Nature, Purpose and Beneficiaries of Project:

The proposed regulations will bring existing experimental gear permits that were approved by FGC and issued by CDFW in December 2018 pursuant to Fish and Game Code Section 8606 (repealed 2018) into compliance with Fish and Game Code 1022, Experimental Fishing Permit Program.

Name of Public Agency Approving Project: California Fish and Game Commission (FGC)

Name of Person or Agency Carrying Out Project: California Department of Fish and Wildlife (CDFW)

Exempt Status: **(check one):**

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ Categorical Exemption. State type and section number: §15306 & 15307, Title 14, Cal Code Regs
- ☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt:

The Class 6 exemption is related to CDFW's actions of basic data collection, research, experimental management, and resource evaluation activities; and, Class 7 to assure the maintenance, restoration, or enhancement of a natural resource authorized by statute to protect natural resources and the environment. No exceptions to categorical exemptions apply. See attachment.

Lead Agency

Contact Person: Craig Castleton

Area Code/Telephone/Extension: (916) 653-4899

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: _____ Date: _____ Title: Executive Director

☒ Signed by Lead Agency ☐ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

October 10, 2019

ATTACHMENT TO NOTICE OF EXEMPTION
Adoption of Chapter 5.6, Section 90, and Section 704
Title 14, California Code of Regulations (CCR)
RE: Experimental Fishing Permit Program (Phase 1)

The California Fish and Game Commission (Commission) has taken final action under the Fish and Game Code and the Administrative Procedure Act (APA) with respect to the project adopted on October 10, 2019. In taking its final action for the purposes of the California Environmental Quality Act (CEQA, Pub. Resources Code, § 21000 *et seq.*), the Commission adopted Chapter 5.6, Experimental Fishing Permit (EFP) Program, Section 90, Issuance of Experimental Fishing Permits, and Section 704, Experimental Fishing Permits; Fees and Forms, of Title 14, CCR, relying on the categorical exemptions for “Information Collection” and “Actions by Regulatory Agencies for Protection of Natural Resources” contained in CEQA Guidelines sections 15306 and 15307, Title 14, CCR.

In adopting Chapter 5.6, Section 90, and Section 704, Title 14, CCR, the Commission relied, for purposes of CEQA, on the Class 6 exemption related to the California Department of Fish and Wildlife’s (Department) actions of basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource; and, the Class 7 exemption to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment, as set forth in the CEQA Guidelines, sections 15306 and 15307, Title 14, CCR.

The project is part of a study that may lead to future action which the Department has not yet taken.

The proposed regulations implement, in part, Assembly Bill 1573 (Bloom, 2018), also known as the California Fisheries Innovation Act of 2018, which became effective on January 1, 2019. This legislative action repealed the experimental gear permit (EGP) provisions in Fish and Game Code Section 8606 and added new Fish and Game Code Section 1022, providing for an EFP program to facilitate fishery-related exploration and experimentation to inform fishery management. Specifically, the proposed regulations establish the process for issuing the new EFP to the previously approved applicants for box crab EGPs to provide clarity and consistency with Fish and Game Code Section 1022. Because the project involves a process for information gathering for possible future management consideration by the Department and Commission and will not result in significant disturbances to marine resources, the activity is one that is the proper subject of CEQA’s Class 6 and Class 7 categorical exemptions.

No exceptions to these categorical exemptions apply.

Memorandum

Date: July 22, 2019

To: Melissa Miller-Henson
Acting Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director

Subject: **Agenda Item for August 8, 2019 Fish and Game Commission Meeting**
Re: Request for Authorization to Publish Notice of Commission's Intent to Add Chapter 5.6, Experimental Fishing Permit Program, containing Section 90, Issuance of Experimental Fishing Permits; and Add Section 704, Experimental Fishing Permits; Fees and Forms; and Overview of California Environmental Quality Act (CEQA) Categorical Exemptions

Attached please find the Initial Statement of Reasons (ISOR) which proposes to add a new Chapter 5.6, Experimental Fishing Permit Program, containing new Section 90, Issuance of Experimental Fishing Permits, and add a new Section 704, Experimental Fishing Permits; Fees and Forms, to Title 14, California Code of Regulations (CCR). The proposed regulations will bring existing experimental gear permits (EGPs) for the box crab fishery that were approved by the Fish and Game Commission (Commission) and issued by the Department of Fish and Wildlife (Department) in December 2018 pursuant to Fish and Game Code (FGC) Section 8606 (repealed 2018) into compliance with new FGC Section 1022. A broader programmatic rulemaking (Phase 2, 2020) will be proposed to build out an EFP program as envisioned by the legislature pursuant to Assembly Bill No. 1573 (Bloom, 2018).

The Department requests that the Commission authorize publishing notice of its intent to adopt new Chapter 5.6, containing new Section 90, and adopt new Section 704, Title 14, CCR. Authorization of this request to publish notice will allow for discussion and possible adoption at the October 9-10, 2019 Commission meeting.

The Department asks that the Commission request that the Office of Administrative Law make the regulation effective on or before January 1, 2020.

Categorical Exemptions to Protect Natural Resources and the Environment

This memorandum describes Department staff's analysis of the use of a categorical exemption under the California Environmental Quality Act (CEQA).

Melissa Miller-Henson, Acting Executive Director
Fish and Game Commission
July 22, 2019
Page 2 of 3

The Commission's adoption of the proposed regulations is an action subject to CEQA. The review by Department staff pursuant to CEQA Guidelines Section 15061, Title 14, CCR, led Department staff to conclude that adoption of the

regulations would properly fall within the Class 6 and Class 7 categorical exemptions (CEQA Guidelines Sections 15306 and 15307, Title 14, CCR). The Class 6 exemption is related to the Department's actions of basic data collection, research, experimental management, and resource evaluation activities; and, the Class 7 exemption to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment.

No Exceptions to Categorical Exemptions Apply

As to the exceptions to categorical exemptions set forth in CEQA Guidelines Section 15300.2, Title 14, CCR, including the prospect of unusual circumstances and related effects, Department staff has reviewed all of the available information possessed by the Department relevant to the issue and does not believe adoption of the regulations poses any unusual circumstances that would constitute an exception to the categorical exemptions set forth above. Compared to the activities that fall within Class 6 and Class 7 generally, which include the given examples of study leading to an action, and wildlife preservation activities of the Department, as the current proposal, there is nothing unusual about the proposed regulations. In addition, even if there were unusual circumstances, no potentially significant effects on either a project-specific or a cumulative basis are expected.

Therefore, the Department does not believe that its reliance on Class 6 and Class 7 categorical exemptions are precluded by the exceptions set forth in CEQA Guidelines Section 15300.2, Title 14, CCR.

If you have any questions or need additional information, please contact Dr. Craig Shuman, Marine Region Regional Manager, at (916) 445-6459. The public notice for this rulemaking should identify Sr. Environmental Scientist Supervisor Tom Mason as the Department's point of contact. Mr. Mason can be reached at (858) 637-7100 or Tom.Mason@wildlife.ca.gov.

Attachments

ec: Stafford Lehr, Deputy Director
Wildlife and Fisheries Division
Stafford.Lehr@Wildlife.ca.gov

Craig Shuman
D. Env. Regional Manager
Marine Region
Craig.Shuman@wildlife.ca.gov

Melissa Miller-Henson, Acting Executive Director
Fish and Game Commission
July 22, 2019
Page 3 of 3

Sonke Mastrup
Environmental Program Manager
Marine Region
Sonke.Mastrup@wildlife.ca.gov

Marina Som
Environmental Scientist
Marine Region
Marina.Som@wildlife.ca.gov

Steve Rienecke
Environmental Scientist
Marine Region
Steven.Rienecke@Wildlife.ca.gov

Dan Lehman
Asst. Chief
Law Enforcement Division
Dan.Lehman@wildlife.ca.gov

Joshua Morgan
Branch Chief
License and Revenue Branch
Joshua.Morgan@Wildlife.ca.gov

Glenn Underwood
Manager
License and Revenue Branch
Glenn.Underwood@Wildlife.ca.gov

Garret Wheeler
Staff Counsel
Office of General Counsel
Garrett.Wheeler@Wildlife.ca.gov

Michelle Selmon
Program Manager
Regulations Unit
Michelle.Selmon@Wildlife.ca.gov

Mike Randall
Regulations Analyst
Regulations Unit
Mike.Randal@wildlife.ca.gov

Memorandum

Date: September 23, 2019

To: Melissa Miller-Henson
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director

Subject: Public comment response for proposed adoption of Chapter 5.6, containing Section 90; and proposed adoption of Section 704, Title 14, California Code of Regulations, Re: Experimental Fishing Permit Program (Phase 1) (Agenda Item for the October 9-10, 2019, Fish and Game Commission meeting)

The Department of Fish and Wildlife (Department) has prepared this memo to inform the proposed adoption of Chapter 5.6, containing Section 90, and proposed adoption of Section 704, Title 14, California Code of Regulations, relating to the issuance of experimental fishing permits (EFPs). There have been no substantive comments received, amendments to the proposed regulatory text, or additional information gathered for this rulemaking.

Public comments received during the period July 25, 2019 through September 23, 2019 are summarized and responded to below.

- (1) Chris and Dominique Miller, email received July 25, 2019:
 - a. The commenters expressed inspiration from the Department's work to date on the box crab EFPs and intend to convene a fisherman's data review committee to discuss approaches to experimental fisheries, beginning with a discussion of whale entanglement and marine mammal conflict resolution.

Department's response:

- a. This comment provides general information regarding a process undertaken by stakeholders to encourage experimental fishing activities, which is outside the scope of this rulemaking and therefore does not warrant any changes to the proposed regulations.
- (2) Kate Kauer, The Nature Conservancy, oral testimony at August 8, 2019 Fish and Game Commission (Commission) meeting:
 - a. Supports the Department's recommendation for implementation of the EFP Program through a two-phased approach, and additionally supports the proposed timeline for the EFP Phase 2 rulemaking to allow for additional public scoping.

- b. Suggests the Department clarifies the intent of phasing in the EFP Program requirements stipulated in Fish and Game Code (FGC) Section 1022 by amending the regulatory language during the EFP Phase 2 rulemaking; specifically, pertaining to a public comment period, submission of a final report by EFP program participants, and the Commission's flexibility in charging permit fees.

Department's response:

- a. Support noted.
- b. As discussed in the Initial Statement of Reasons dated July 22, 2019, the Department and Commission will take a two-phased approach to fully implement the EFP Program as required by FGC Section 1022. Phase 1 of EFP Program implementation will produce a process for issuing EFPs for the continuation of the experimental box crab fishery (the intent of this rulemaking). Phase 2 of the EFP Program implementation will fully develop the program as envisioned by the Legislature through FGC Section 1022, and will thus address the concerns raised by the commenter regarding a public comment period, submission of a final report by EFP program participants, and the charging of permit fees. As stated by the Department at the August 8, 2019 Commission meeting, the Department will initiate the Phase 2 rulemaking in 2020.

In conclusion, the Department finds that the comments received do not warrant changes to the proposed experimental fishing permit regulations.

If you have any questions on this item, please contact Dr. Craig Shuman, Regional Manager of the Marine Region, at (916) 445-6459 or Craig.Shuman@wildlife.ca.gov.

ec: Stafford Lehr
 Deputy Director
 Wildlife and Fisheries Division
 Stafford.Lehr@wildlife.ca.gov

Craig Shuman
D. Env., Regional Manager
Marine Region
Craig.Shuman@wildlife.ca.gov

Mike Stefanak
Assistant Chief
Law Enforcement Division
Mike.Stefanak@wildlife.ca.gov

Melissa Miller-Henson, Executive Director
Fish and Game Commission
September 23, 2019
Page 3 of 3

Sonke Mastrup
Environmental Program Manager
Marine Region
Sonke.Mastrup@wildlife.ca.gov

Michelle Selmon
Environmental Program Manager
Regulations Unit
Michelle.Selmon@wildlife.ca.gov

Robert Puccinelli
Captain
Law Enforcement Division
Robert.Puccinelli@wildlife.ca.gov

Tom Mason
Senior Environmental Scientist
(Supervisor)
Marine Region
Tom.Mason@wildlife.ca.gov

Marina Som
Environmental Scientist
Marine Region
Marina.Som@wildlife.ca.gov

Elizabeth Pope
Acting Marine Advisor
Fish and Game Commission
Elizabeth.Pope@fgc.ca.gov



Experimental Fishing Permit Rulemaking



Fish and Game Commission Meeting

October 10, 2019

Adoption Hearing

**Dr. Craig Shuman
Marine Regional Manager
California Department of Fish and Wildlife**



Background

- Assembly Bill 1573 (2018) – Repealed FGC Section 8606 experimental gear permits and added new FGC Section 1022
- FGC Section 1022 – Requires the Commission to establish an Experimental Fishing Permit (EFP) program to facilitate fishery-related exploration and experimentation to inform fishery management



EFP Program Phase I

Phase I: Regulatory framework for the box crab program to continue under FGC Section 1022 before existing permits expire in March 2020.

Key components of proposed regulations:

- Establishes a process for issuance of box crab EFPs
- Establishes a form for permit terms and conditions
- Sets a permit fee

Timeline: August 2019
October 2019
January 2020

Notice
Discussion and adoption
Effective date



EFP Program Phase II

Phase II: Build out of EFP program in 2020.

Timeline:	January 2020	Public scoping to receive input
	March	Provide update at MRC meeting
	August	Notice
	October	Discussion
	December	Adoption hearing



Thank You

For more information please contact:

Tom Mason

Sr. Environmental Scientist

Marine Region, Department of Fish and Wildlife

Tom.Mason@Wildlife.ca.gov