STAFF SUMMARY FOR DECEMBER 6-7, 2017

28. MARINE PETITIONS FOR REGULATION CHANGE

Today's Item **Information ☐** **Action ☒**

This is a standing agenda item for FGC to act on regulation petitions from the public that are marine in nature. For this meeting:

(A) Action on petitions for regulation change received at the Oct 2017 meeting.

(B) Update on pending regulation petitions referred to staff or DFW for review.

Summary of Previous/Future Actions

(A)

- Receipt of new petitions — Oct 11-12, 2017; Atascadero
- **Today's action on petitions** — **Dec 6-7, 2017; San Diego**

(B)

- MRC review of petition #2017-005 — Nov 9, 2017; MRC, Marina
- **Today's update and action** — **Dec 6-7, 2017; San Diego**

Background

As of Oct 1, 2015, any request for FGC to adopt, amend, or repeal a regulation must be submitted on form FGC 1, "Petition to the California Fish and Game Commission for Regulation Change" (Section 662, Title 14). Petitions received at the previous meeting are scheduled for consideration at the next business meeting, unless the petition is rejected under 10-day staff review as prescribed in subsection 662(b).

Petitions scheduled for consideration today under (A) were received at the Oct 2017 meeting in one of three ways: (1) submitted by the comment deadline and published in the meeting binder, (2) submitted by the late comment deadline and delivered at the meeting, or (3) received during public forum. Petitions considered under (B) were scheduled for action at a previous meeting and were referred by FGC to DFW or FGC staff for further review prior to action.

(A) ***Petitions for regulation change.*** Exhibit A1 summarizes the regulation petitions scheduled for action today and provides staff recommendations for each. One marine regulation petition from Oct 2017 is scheduled for FGC action at this meeting:

I. *Petition #2017-010 (issue trap endorsement for commercial nearshore fishery)* (Exhibit A2).

(B) ***Pending regulation petitions.*** This item is an opportunity for staff to provide a recommendation on non-marine petitions previously referred by FGC to DFW or FGC staff for review. FGC may act on any staff recommendations made today.

One update on pending marine petitions referred to DFW staff and MRC is scheduled for action at this meeting:

I. *Petition #2017-005 (issue 20 non-transferable pink shrimp trawl permits)* (Exhibit B1). DFW presented its review to MRC at the Nov 9, 2017 MRC meeting. DFW presented a review of management changes needed within

the existing pink shrimp trawl fishery. Based on a priority to address management needs within the existing fishery before making changes to any permits, MRC recommends that the petition be denied (see petition in Exhibit B1 and MRC summary in Exhibit 2 of Agenda Item 20, this meeting).

Significant Public Comments (N/A)

Recommendation

(A) Adopt the staff recommendation for each regulation petition to (1) deny, (2) grant, or (3) refer to committee, staff or DFW for further evaluation or information-gathering. See Exhibit A1 for staff recommendation.

(B) Adopt DFW and MRC recommendation for regulation Petition #2017-005.

Exhibits

A1. FGC table of marine petitions for regulation change received through Oct 12, 2017, for action in Oct 2017

A2. Petition #2017-010: Issue trap endorsement for commercial nearshore fishery

B1. Petition #2017-005: Issue 20 non-transferable pink shrimp trawl permits

Motion/Direction

(A) Moved by _____ and seconded by _____ that the Commission adopts the staff recommendation for actions on the Oct 2017 petition for regulation change and adopts the staff recommendation for pending petition #2017-005 for regulation change.

OR

Moved by _____ and seconded by _____ that the Commission adopts the staff recommendation for actions on the Oct 2017 petition for regulation change and adopts the staff recommendation for pending petition #2017-005 for regulation change, except for petition number _____ for which the action is _____.

CALIFORNIA FISH AND GAME COMMISSION
DECISION LIST FOR MARINE PETITIONS FOR REGULATION CHANGE RECEIVED THROUGH OCT 12, 2017
Revised 11-20-2017

FGC - California Fish and Game Commission **DFW** - California Department of Fish and Wildlife **WRC** - Wildlife Resources Committee **MRC** - Marine Resources Committee

Grant: FGC is *willing to consider* the petition through a process **Deny:** FGC is *not willing to consider* the petition **Refer:** FGC *needs more information* before deciding whether to grant or deny the petition

Tracking No.	Date Received	Accept or Reject	Name of Petitioner	Subject of Request	Code or Title 14 Section Number	Short Description	FGC Decision	Staff Recommendation
2017-010	10/12/2017	A	Brian Gorrell	Additional trap endorsements	150.03, T14	Create additional trap endorsements for commerical near-shore permits to broaden allowable gear types; methods currently restricted to line gear.	**Receipt: 10/11-12/2017** **Action: Scheduled 12/6-7/2017**	**Deny; a new regulation adopted by FGC in Oct 2017 affected transferability of nearshore and deeper nearshore fishery permits, and transfers to new permittes are anticipated. Do not recommend any changes to the nearshore fishery program (e.g., expanding use of trap gear), until after the impact of the new regulation can be determined.**

2017-010
Tracking Number: ~~(Click here to enter text.)~~

To request a change to regulations under the authority of the California Fish and Game Commission (Commission), you are required to submit this completed form to: California Fish and Game Commission, 1416 Ninth Street, Suite 1320, Sacramento, CA 95814 or via email to FGC@fgc.ca.gov. Note: This form is not intended for listing petitions for threatened or endangered species (see Section 670.1 of Title 14).

Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission's authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or FGC@fgc.ca.gov.

SECTION I: Required Information.

Please be succinct. Responses for Section I should not exceed five pages

- **Person or organization requesting the change (Required)**
  Name of primary contact person: Brian Gorrell
  Address:
  Telephone number:
  Email address:

- **Rulemaking Authority (Required) -** Reference to the statutory or constitutional authority of the Commission to take the action requested: **Additional Trap Endorsements for S. Central Ca nearshore**

- **Overview (Required) -** Summarize the proposed changes to regulations:
- I would like to propose that the commission take the initiative to create additional trap endorsements.
- for those who would like to fish with traps, due to environmental issues such as marine mammals and other marine predators or personal preference.

- **Rationale (Required) -** The amount of marine life such as Harbor Seals, Sea Lions, and other marine predators of rockfish are at an all time high. Due to this increase in marine life,
- The constant issue of having fish eaten off of the hooks, or being mortally wounded, hooking marine life, marine mammals, having gear taken in to unsafe water, etc is virtually unavoidable with hook and line fishing in Monterey Bay. There is also an incredible loss of deep nearshore species, prohibited species, and undersized species. Many of these fish are being killed or mortally wounded by predators underwater.
- The answer: Traps
- Traps protect species underwater, so that they are not eaten or injured off of the hook and line
- Hook and line and trap endorsed permits are allowed the same catch limit

SECTION II: Optional Information

- **Date of Petition:** 10-12-2017

- **Category of Proposed Change**

□ Sport Fishing
x Commercial Fishing
□ Hunting
□ Other, please specify: Click here to enter text.

- **The proposal is to:** (*To determine section number(s), see current year regulation booklet or https://govt.westlaw.com/calregs*)
  □ Amend Title 14 Section(s):Click here to enter text.
  □ Add New Title 14 Section(s): Click here to enter text.
  □ Repeal Title 14 Section(s): Click here to enter text.

- **If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition** Click here to enter text.
  Or x Not applicable.

- **Effective date**: If applicable, identify the desired effective date of the regulation.
  If the proposed change requires immediate implementation, explain the nature of the emergency: **Immediate implementation**
- Every day that is being fished with nearshore hook and line gear in Monterey, Ca fish species are being unfairly decimated.
- Fish are being eaten off the hook and line by marine predators underwater regardless of their size and/or species. This is contributing directly to the death and decline of future species and fish stocks.
- **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents:

- **Economic or Fiscal Impacts:** Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing:
- fish and wildlife will gain revenue
- The fisherman will gain revenue; he will have to go out less because traps will catch more live fish without loss. Buy less; Bait, Gas, Food, slip and parking fees, and will most likely reach his limit much faster with traps.

- **Forms:** If applicable, list any forms to be created, amended or repealed:
  Click here to enter text.

RECEIVED AT
OCT 12 2017
COMMISSION MEETING
AGENDA ITEM 17
Brian Gorrell

SECTION 3: FGC Staff Only

Date received: Click here to enter text. 10/12/17

FGC staff action:
□ Accept - complete
□ Reject - incomplete
□ Reject - outside scope of FGC authority

Tracking Number

Date petitioner was notified of receipt of petition and pending action: _____

Meeting date for FGC consideration: _____

FGC action:
□ Denied by FGC

☐ Denied - same as petition _____
Tracking Number

☐ Granted for consideration of regulation change

RECEIVED AT
OCT 12 2017
COMMISSION MEETING
AGENDA ITEM _____

From: Brian Gorrell
Sent: Tuesday, November 07, 2017 3:47 PM
To: FGC
Subject: Added authority to petition

Dear commission,
I would like to please add this authority to the petition that I submitted to the commission in regards to regulation section 150.03

Authority cited: Sections 713, 1050 and 8587.1, Fish and Game Code. Reference: Sections 1050, 7852.2, 8046, 8589.5, 8589.7, 9001 and 9001.5, Fish and Game Code.

Thank you!
Sincerely,
Brian Gorrell

On Oct 11, 2017 7:14 AM, "FGC" <FGC@fgc.ca.gov> wrote:

> Dear Mr. Gorrell,
>
> Your email was received too late to be provided to the Commission at its meeting in Atascadero, but the questions you outline will be forwarded to the Commission's Marine Advisor upon her return to the office, following this weeks meeting.
>
> Your other option for getting your concerns in front of the Commission today or tomorrow is if you or someone you know can deliver ten copies of your letter to the Atascadero, CA meeting.
>
> Sincerely,
>
> Jon S.
>
> Commission Staff
>
> ---
>
> **From:** Brian Gorrell
> **Sent:** Tuesday, October 10, 2017 9:37 PM

To: FGC
Subject: s. central nearshore fisherman public response

Dear Commission,

My name is Brian Gorrell. I am 34 years old and I live in Carmel, CA.

I am currently an active S. Central nearshore non-trap endorsed permit holder.

and fish primarily in Monterey Bay Marine Sanctuary.

I am a newer permittee, being that I have only been fishing under my own permit since 2012.

It took me 2 years to find a permit for sale, and coordinate the loan to purchase my first permit (which is not trap endorsed.) Then it took me another year to find another available permit. I was paying on a loan that was unable to make money for over a year. When I finally found my second permit, it was not trap endorsed either. I decided something was better than nothing and that I should just buy the permit and start fishing. My uncles and cousins all have trap endorsements. I had only worked using traps, which was effective and worth the time and investment of buying a permit. Unfortunately, there are no trap endorsement for sale anymore.

My current situation is that everyone in my nearshore fleet of Monterey harbor that fishes hook and line also has a deep nearshore license, except for me. They fish using hand-line or a combination of hand-line and stick gear (hooks on a piece of rebar attached to a buoy) or they use traps

I come from a fishing family, and I am committed to sustainable practices, but I am struggling with a mismatch between how I'm allowed to fish and the negative effects on the resource. As a consequence, I have consistent problems, but I also have suggestions for how the situation could be improved. I'm going to explain the recurring issues I have in the two following points and I will propose some potential solutions:

My first point is that

a. I would like to request a trap endorsement issued from the Dept. of Fish and Wildlife, not to purchase one from a current trap owner. **Realistically, no fisherman with a trap endorsement will sell just the trap endorsement without the permit, effectively putting themselves in the same situation I find myself in.** I have been unable to locate a trap endorsement for sale since I began looking for a permit. **If the purpose of**

permits and endorsement is to protect and ensure survival of species, I would like to be given the opportunity to do just that.

Please offer me an option to endorse my permit. I am unnecessarily harming fish and wildlife by being forced to use only one method of fishing, regardless of factors such as marine life or weather conditions.

I would like the freedom to choose to use either method of fishing, based on the environment, similar to the trap endorsed fishermen who are able to do as they are still able to fish using hook and line along with traps.

As a conclusion, I have been barely making it financially because of the issues described above, and I fear my negative impact on many different species is outweighing my allowable catch.

1. I am unable to use a fishing method that is effective and not harmful for the environment in my area because I'm only allowed to fish with hook and line and not traps.

2.1 **Trap fishing is much more effective, selective and safe in my region because they keep harbor seals, sea lions, and other predatory fish from eating what you have caught.** As for fish caught on hook and line, they are rendered helpless on a buffet line and unable to hide from other predators. This happens immediately as soon as they are hooked. This applies to any fish caught, undersized fish, by-catch species, etc. often before I am able to get the gear out of the water. This negatively affects the fish, the fishermen, and other species.

Indeed, as a result:

1) the fish may have to be released (because it is either under size or the wrong species) and may be eaten, have a mortal hook or attack wound, or at best a hole in their face because of the use of hooks,

2) the fisherman has now lost fish, bait, and or gear before they ever see the gear come out of the water,

3) seals, are being caught on fishing hooks, entangled in gear, or dragged out of my reach into shallower, unsafe shoreline.

The third issue (the seals) is the biggest issue in my area, being that we have an incredible amount of protected sea mammals living and inhabiting our area. I have been told their population levels are at a historical all time high right now. And as a result, I encounter this issue daily and I have found that I am unable to avoid the constant threat of them being caught on my hooks, moving my gear or taking the fish. To better protect them in accordance with the Marine Mammal Protection Act, I need the opportunity to adapt my method of fishing.

2.2 Fish are wounded when they are hooked. Usually it is ok, but sometimes it is a fatal wound and the fish will later die. So, if the fish has made it through the predatory gauntlet and made it to the boat, they may still

be mortally wounded, leaving them dead or dying and not desired in the nearshore live-fish market, resulting in an environmental and economical waste.

Fish caught by trap never get this wound, and are therefore released or kept healthy and alive, making the use of traps both economically and environmentally a much more viable option for me.

2.3 By-catch- is easily released unharmed from traps. Starfish, sea urchins, crabs, seals, other fish, or any other by-catch, can easily be released unharmed, or prevented from ever having access to the traps. All of these creatures can be hooked by hooks and therefore injured.

2.4 Bait in traps is kept in a jar or bait cage. Bait on hooks continually disappears or is no longer usable. Once the bait is taken or comes off, the gear is no longer fishing. Traps can be left to acquire more fish. The hook and line gear, however, cannot. The bait will be taken, and the fish will be eaten or injured by predators.

2.5 Both Trap and Hook and Line are allowed the same catch limit. What I am not sure is taken into consideration, is that when the fleet of hook and line fisherman are landing their fish, these fish have usually been kept in a receiver for up to 7 days and consists of multiple days of fishing. The landing numbers are about the same between the trap and hook and line fisherman, but usually those fishing with traps have more. However, the trap landings are only for one day of fishing!

So...

they only had to go out (1x)

buy gas (1x)

buy bait (1x)

do everything (1x)... and they are still catching more than the hook and line fisherman.

And the by-catch is less and released unharmed!

The seals and predators are not able to steal the bait, move the gear, eat the fish from the trap, or unintentionally injure themselves.

2. My second point is that I am unable to effectively hand-line or use a fishing pole for nearshore species, because I end up catching deep nearshore species more than nearshore species even in 10-20 feet of water. I catch blues, black, olives, etc. more commonly than the nearshore species I am targeting.

This means I am forced to use (stick) fishing gear. Sticks stay on the bottom and I can use more gear at once and hopefully catch more nearshore species as well, but the majority of the fish I catch in the nearshore region are considered deep nearshore and I must return them to the water regardless. (I am currently the only person in our area who must fish with hook and line but cannot keep deep nearshore species.)

This puts me in a tough position. These species are often injured by predators or hooks before I can land them on the boat to unhook them and release their air bladder before having to then throw them back. They

are also eaten by predators off the line or on the way back down. I am not allowed to use traps to effectively mitigate this situation due to permit limitation.

This means, once I catch them I have to constantly unhook and release the air bladder of each fish individually and return them without being able to keep them. I am using my bait and time to catch fish in my designated nearshore areas, and injuring or possibly mortally wounding fish that I have to take time and energy to release.

I have caught them with my bait and my gear in waters considered to be as near to shore as possible.

Throwing them back wounded, leaving them vulnerable to ambush by seals or other predators on the way up and down, only to have someone with a deep nearshore permit catch them again seems cruel and wasteful to everyone involved.

Being that I am catching these fish consistently in waters as close as possible to the shore, I would like to be able to keep these fish. My specific requests are outlined below.

a. I would like to request to have my nearshore license combined with a deep nearshore license.

To be required to purchase a third license, since I have already bought two nearshore permits to create one so that I can keep the deep nearshore species that I am catching regularly in the nearshore region seems like too many permits and permit purchases for the same fishing grounds realistically.

Adding new fishermen, who will be fishing the same grounds will impact all the species negatively. As of now the fleets are small and we can move around from place to place with relatively low impact.

More boats fishing the same grounds for deep nearshore species only will result in by-catch issues for both the nearshore permit holder as well as the deep nearshore permit holder.

or

b. I would like to be given the opportunity to purchase a deep nearshore endorsement before the permits are sold to a new fisherman without a nearshore license, effectively leaving me with the same issue of by-catch as I am currently in. I would assume this would be the same issue for the new deep nearshore fisherman without a nearshore permit, because nearshore species like cabezon, black and yellow, gopher, greenling, etc, also are caught in the deep nearshore waters. With a coastline like Monterey, CA that drops off dramatically, it is realistic to be fishing in 10-120 feet of water less than 50 feet from the rocks.

Essentially, I would like to be able to keep the fish I catch. The distinction between which species are retainable for near versus deeper nearshore permits does not match actual species distributions. I am spending the time, energy and money to fish in my designated areas but I am catching far too many "deeper" water species in those places. I have seen no depth boundary line which distinguishes the separation of these fish. If I could keep everything I catch like the other hook and line nearshore/deep nearshore fishermen in my area, it would be the most economically and environmentally sustainable option.

I am not catching my limits due to the issues listed above. Please allow me a way to right this inefficiency in the method of fishing I have been cornered into. My specific request is outlined below:

a. I would like to request a trap endorsement issued from the Dept. of Fish and Wildlife, not to purchase one from a current trap owner. Realistically, no fisherman with a trap endorsement will sell just the trap endorsement without the permit, effectively putting themselves in the same situation I find myself in. I have been unable to locate a trap endorsement for sale since I began looking for a permit. If the purpose of permits and endorsement is to protect and ensure survival of species, I would like to be given the opportunity to do just that. Please offer me an option to endorse my permit. I am unnecessarily harming fish and wildlife by being forced to use only one method of fishing, regardless of factors such as marine life or weather conditions.

I would like the freedom to choose to use either method of fishing, based on the environment, similar to the trap endorsed fishermen who are able to do as they are still able to fish using hook and line along with traps.

As a conclusion, I have been barely making it financially because of the issues described above, and I fear my negative impact on many different species is outweighing my allowable catch.

In summary, my two propositions to resolve this situation are:

*Being issued a deep nearshore permit (so I can keep deep nearshore species I catch and avoid bycatch and waste)

*Getting a trap endorsement (so I can fish more efficiently, and not harm and lose my catch or possible bycatch)

I ask you to please help me in addressing my concerns. They are related directly to your public hearing matters on nearshore permits, and I have been wanting to address these issues since I began fishing with my nearshore permit. I am available for questions or conversations at anytime and look forward to attending the upcoming meetings!

Thank you for your time.

Sincerely,

Brian Gorrell

S. Central nearshore permit

State of California – Fish and Game Commission
PETITION TO THE CALIFORNIA FISH AND GAME COMMISSION FOR REGULATION CHANGE
FGC 1 (NEW 10/23/14) Page 1 of 2

2017-005

Tracking Number: (~~unsure- please enter~~)

To request a change to regulations under the authority of the California Fish and Game Commission (Commission), you are required to submit this completed form to: California Fish and Game Commission, 1416 Ninth Street, Suite 1320, Sacramento, CA 95814 or via email to FGC@fgc.ca.gov. Note: This form is not intended for listing petitions for threatened or endangered species (see Section 670.1 of Title 14).

Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission's authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or FGC@fgc.ca.gov.

RECEIVED
JUN -6 PM 2:11
CALIFORNIA
FISH AND GAME
COMMISSION

SECTION I: Required Information.

Please be succinct. Responses for Section I should not exceed five pages

1. **Person or organization requesting the change (Required)**
   Name of primary contact person: Scott R. Hartzell
   Address:
   Telephone number:
   Email address:

2. **Rulemaking Authority (Required)** - Reference to the statutory or constitutional authority of the Commission to take the action requested: **Sections 713, 1050, 8591, 8841, & 8842 Fish & Game Code Ref: Sections 1050, 7852.2, 7858, 8101, 8591,& 8842.**

3. **Overview (Required)** - Summarize the proposed changes to regulations: Create 20 new non-transferable Northern Pink Shrimp permits. To be sold @ $50,000 each & renewed every year or forfeiture. No overall length limit to be associated with the permit. Move the fishery back inside the 3 mile demarcation line with certain exceptions. Require: 10 shrimp deliveries within 5 years or forfeiture

4. **Rationale (Required)** - Describe the problem and the reason for the proposed change: Under utilized fishery, needed revenue for the state and commercial fishermen.

SECTION II: Optional Information

5. **Date of Petition: May 29, 2017.**

6. **Category of Proposed Change**
   ☐ Sport Fishing
   x Commercial Fishing
   ☐ Hunting

☐ Other, please specify: Click here to enter text.

7. **The proposal is to:** (*To determine section number(s), see current year regulation booklet or https://govt.westlaw.com/calregs*)
x Amend Title 14 Section(s):Section 120.2, Title 14, CCR, H
☐ Add New Title 14 Section(s): Click here to enter text.
☐ Repeal Title 14 Section(s): Click here to enter text.

8. **If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition** Click here to enter text.
Or x Not applicable.

9. **Effective date**: If applicable, identify the desired effective date of the regulation.
If the proposed change requires immediate implementation, explain the nature of the emergency: as soon as possible.

10. **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents: none.

11. **Economic or Fiscal Impacts:** Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing: The current Pink Shrimp Fishery has evolve: to have minimal impact on the bottom terrain & its non-targeted species. Create economic gains for California's much needed commercial fisheries.

12. **Forms:** If applicable, list any forms to be created, amended or repealed:
none

SECTION 3: FGC Staff Only

Date received: ~~Click here to enter text.~~ June 6, 2017

FGC staff action:
☐ Accept - complete
☐ Reject - incomplete
☐ Reject - outside scope of FGC authority

Tracking Number

Date petitioner was notified of receipt of petition and pending action: June 21-22, 2017

Meeting date for FGC consideration: August 16-17, 2017

FGC action:
☐ Denied by FGC
☐ Denied - same as petition _____
Tracking Number
☐ Granted for consideration of regulation change