

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 8403 and 9022 of the Fish and Game Code and to implement, interpret or make specific Sections 8403, 9001.6, 9001.7, 9006, and 9022 of said Code, proposes to amend Section 180.6, Title 14, California Code of Regulations, relating to the use of traps to take hagfish.

Informative Digest/Policy Statement Overview

In California, Pacific Hagfish (*Eptatretus stoutii*) (hagfish) is an open access commercial fishery administered by the Department of Fish and Wildlife (Department). Fishing is allowed year-round in all depths of State and federal waters, except in Marine Protected Areas. The hagfish fishery is primarily managed via restrictions on the amount and type of gear allowed. The method for take is by one of three baited trap types: bucket trap, Korean trap, and more recently, barrel traps. Section 9000.5 and subdivision 9001.6(b) of Fish and Game Code (FGC) define and authorize no more than a total of 500 Korean-style traps, or a total of 200, five-gallon bucket traps aboard a vessel, or in the water or combination thereof. The Commission approved the use of 25 barrel traps (40-gallon capacity) as an alternative trap type under subsection (b) of Section 180.6, Title 14, California Code of Regulations (CCR) effective January 1, 2016. The 25-barrel trap limit was intended to be per vessel, and serve as a volumetric equivalent to the 200 five-gallon bucket trap limit prescribed by subdivision (b) of FGC Section 9001.6.

There are no daily, seasonal, or annual catch limits for the hagfish fishery. Further, the fishery has no reporting requirement, other than a landing receipt, and there is no minimum size limit, landing quota, or seasonal closure. There is no recreational fishery for hagfish. Pursuant to FGC sections 9000.5 and 9001, all participants on a fishing vessel (i.e., vessel crewmembers) are required to have a current general trap permit, and thus serve as "permittees." FGC Section 9005 requires every trap or string of traps to be marked with a buoy, and FGC subdivision 9006(b) requires the buoy identifying traps used to take hagfish to be marked with the operator's (i.e., responsible fisherman's) commercial fishing license identification number only ("L number") with no prescribed lettering.

When Section 180.6, Title 14, CCR was last amended (effective January 1, 2017) to shift from a 40 gallon volume to a dimension-based measurement of barrel trap size, subsection 180.6(b) was amended in an attempt to simplify language regarding trap use by a vessel by stating that "...no permittee may possess more than 25 barrel traps aboard a vessel or in the water or combination thereof." Due to the fact that a permittee can be the vessel operator, and/or any crewmember, the current language allows the use of 25 barrel traps per permittee, which goes against the original intent of the regulation effective January 1, 2016 to allow a maximum of 25 barrel traps per vessel (the volumetric equivalent to the 200 five-gallon bucket trap limit prescribed by subdivision (b) of FGC Section 9001.6).

Proposed Regulation:

The proposed amendment to subsection (b) of Section 180.6, Title 14, CCR re-establishes the number of allowed barrel traps (25) per vessel, regardless of the number of permittees aboard the vessel. In addition to the commercial fishing license identification number, hagfish fishermen will also be required to mark buoys used to mark any hagfish traps with the vessel's California commercial boat registration number.

The following is a summary of the changes proposed for Section 180.6, Title 14, CCR:

- Remove the words "permittee may possess" from subsection (b), thus linking the 25 barrel trap limit to the vessel.
- Add subsection (c) requiring the use of the vessel's California commercial boat registration number to mark the buoy used to mark any hagfish trap (fishermen will continue to mark buoys with all fishermen L numbers operating the vessel, as required by FGC subdivision 9006(b)).

Benefits of the Proposed Regulation:

Linking the maximum number of barrel traps utilized and possessed to the vessel instead of the permittee will limit the fishing capacity of vessels that utilize this gear. Since there are no other management measures that limit hagfish fishing capacity, limiting the number of barrel traps by vessel will help ensure sustainability of the hagfish resource, reduce potential conflicts between fishermen using similar fishing grounds, and limit the number of vertical buoy lines to reduce potential impact to other marine life.

By requiring the use of the vessel's California commercial boat registration number to mark the buoy used to mark any hagfish trap, Law Enforcement Division staff will be able to determine, at sea, how many traps a vessel is utilizing and/or possessing. This requirement would apply to all trap types authorized for the take of hagfish.

Consistency and Compatibility with Existing Regulations:

Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate the commercial take of finfish using traps (FGC sections 8403 and 9022). No other State agency has the authority to promulgate commercial fishing 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 CCR for any regulations regarding the use of traps for the commercial take of hagfish and has found no such regulation; therefore the Commission has concluded that the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Red Lion Hotel Redding, 1830 Hilltop Drive, Redding, California 96002, on June 13, 2019, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before May 30, 2019 at the address given below, or by email to FGC@fgc.ca.gov. All comments (both oral and written) must be received no later than June 13, 2019, either at the Commission office or at the address given below, by email to FGC@fgc.ca.gov, or at the June 13, 2019 hearing in Redding, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

Mailed comments should be addressed to Fish and Game Commission, P.O. Box 944209, Sacramento, CA 94244-2090.

Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikethrough format can be accessed through the Commission website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller-Henson, Acting Executive Director, Fish and Game Commission, 1416 Ninth Street, Suite 1320, Sacramento, California 95814, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Melissa Miller-Henson or Craig Castleton at the preceding address or phone number. **Travis Tanaka, Environmental Scientist, Department of Fish and Wildlife, (831) 649-2881 or Travis.Tanaka@wildlife.ca.gov, has been designated to respond to questions on the substance of the proposed regulations.**

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Assessment

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 Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The California hagfish fishery is primarily a live export fishery. Currently, there is increased demand for California-caught hagfish due to the consistency of catch and lower dock price compared to hagfish fisheries 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. There are no anticipated benefits to the health and welfare of California residents and worker safety. However, clarifying the original intent of the regulation effective January 1, 2016 by limiting the number of barrel traps to 25 per vessel would benefit the environment by promoting sustainability of the hagfish resource, limit the amount of barrel gear on the seafloor, and limit the number of vertical buoy lines in the fishery that could potentially impact other marine life.

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

A vessel that may have deployed more than 25 barrel traps in the past could face a reduction in fishing income due to a reduction in the number of traps deployed per vessel. However, the regulation effective January 1, 2016 intended that only 25 barrels be used per vessel, and the majority of fishermen conform to this practice.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Melissa Miller-Henson
Acting Executive Director

Dated: April 16, 2019