

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 This legislative action repealed the experimental gear permit (EGP) provisions in Section 8606, Fish and Game Code (FGC), and added a new FGC Section 1022, providing for an EFP program to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Now-repealed FGC Section 8606 had required the Fish and Game Commission (Commission) to encourage the development of new types of commercial fishing gear and new methods of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.**

<b>Annual Department Costs<sup>1</sup> for 8 Box Crab Permits</b>			
<b>ENFORCEMENT</b>	<b>Hours</b>	<b>Rate (\$/hr)</b>	<b>Subtotal</b>
Patrol Vessel	91	\$196	<b>\$17,836</b>
Overhead			\$4,337.72
<b>Total</b>			<b>\$22,173.72</b>
<b>LICENSE &amp; REVENUE BRANCH (LRB)</b>			
<b>Permit Administration</b>	<b>Hours</b>	<b>Rate (\$/hr)</b>	<b>Subtotal</b>
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
	<b>Total Salary/Wages</b>		<b>\$1,879</b>
Staff Benefits			\$991
	<b>Subtotal Personnel</b>		<b>\$2,870</b>
Overhead			\$698.03
	<b>LRB Total</b>		<b>\$3,568</b>
<b>REGION 7 - MARINE</b>			
	<b>Hours</b>	<b>Rate (\$/hr)</b>	<b>total costs</b>
<b>Permanent Staff</b>			
Senior Environmental Scientist (salary + benefits) <sup>2</sup>	1,330	\$58.69	\$ 78,047
<b>Temporary Staff</b>			
Scientific Aid (Santa Barbara)	145	\$15.53	\$2,252
Scientific Aid (San Diego)	195	\$15.53	\$3,028
Temporary Staff Benefits			\$2,892
	<b>Subtotal Temp Help</b>		<b>\$8,172</b>
Overhead			\$1,988
	<b>Temp Help Total</b>		<b>\$10,160</b>
<b>Total Annual Cost for 8 Permits</b>			<b>\$35,901.99</b>
<b>Cost per Permit<sup>3</sup></b>			<b>\$4,487.75</b>

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:

- <sup>1</sup> 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.
- <sup>2</sup> 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.
- <sup>3</sup> 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.