

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 713, 1022, and 1050 of the Fish and Game Code and to implement, interpret or make specific Sections 713, 1022, and 1050 of said Code, proposes to add Chapter 5.6, Section 90, and add Section 704, Title 14, California Code of Regulations, relating to the issuance of experimental fishing permits.

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 This legislative action repealed the experimental gear permit (EGP) provisions in Section 8606, Fish and Game Code (FGC), and added new FGC Section 1022, providing for an EFP program to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.

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 Rincon Government Center, One Government Center Lane, Valley Center, California 92082, on October 10, 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 September 26, 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 October 10, 2019, either at the Commission office or at the address given below, by email to FGC@fgc.ca.gov, or at the October 10, 2019 hearing in Valley Center, 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 strikeout 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, Box 944209, Sacramento, California 94244-2090, 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. **Tom Mason, Senior Environmental Scientist (Supervisor), Department of Fish and Wildlife, (858) 637-7100 or Tom.Mason@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.

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 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: 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

Dated: August 13, 2019

Melissa Miller-Henson
Acting Executive Director