

The Commission concurs with the Department's recommended response to the comments addressed in the pre-adoption memo and table.

Public comments received after May 30, 2019 are addressed below.

A. Comment by Noah Oppenheim, Pacific Coast Federation of Fishermen's Associations, on behalf of Captain Jerold Rold (F/V Deputy Dawg), received at the June 13, 2019 Commission meeting:

1. The hagfish fishery is a sustainable fishery and it is exciting to see small-scale fisheries such as this be successful using innovative techniques and gear in a sustainable way.
2. The proposed regulatory amendment would preclude the ability of hagfish fishermen to operate a profitable business. The ability to have multiple permits operating simultaneously on the vessel is integral to the fishermen's ability to operate.
3. The proposed regulatory change would force Mr. Rold to leave the fishery.
4. The proposed regulatory change would eliminate a sustainable means of fishing because of regulatory principle and not management principle.
5. The commenter proposed to allow two permits to operate simultaneously on a vessel, at a limit of 25 barrel traps per permit. This proposal would allow deckhands, who cannot operate their own vessel, to still enter the fishery, gain capital, and perhaps even scale up to owning their own hagfish operation.
6. Statute does not limit allowed volume of barrel traps because barrel traps are not mentioned in statute.
7. There is no functional equivalent or precedent of managing gear types based on a volumetric equivalent.
8. The commenter requested the opportunity for permittees and stakeholders to discuss this issue further.

Response:

1. The Department recognizes and acknowledges the comment about the hagfish fishery being sustainable and it is exciting to see small-scale fisheries such as this be successful using innovative techniques and gear in a sustainable way. The Department does encourage new entrants into this open access fishery.
2. Based on Department data (vessel landing weight and value by species and gear type), two-thirds of barrel trap users are fishing

the intended 25 barrel traps per vessel. Since the hagfish fishery is open access, some fishermen participate as supplemental to their primary fishery. Some fishermen and their vessel participate on a full-time basis. For example, the top three vessels, fishing on a full-time basis and using the intended 25 barrel traps averaged 2,353 pounds per landing, valued at \$2,840.

3. The Department is sympathetic to the concerns put forth, but as stated in the Initial Statement of Reasons (ISOR), this regulatory proposal is intended to clarify the original intent of the hagfish regulation effective January 1, 2016 to limit the number of barrel traps to 25 per vessel. See the Department's response to Comment A.2.
4. As the regulations in Section 180.6, Title 14, CCR are currently worded, a large vessel with many permittees could fish many barrel traps. The proposed amendment to subsection (b) of Section 180.6, Title 14, CCR, is necessary to clarify the original intent of the hagfish regulation effective January 1, 2016 which restricts a vessel to utilize and possess no more than 25 barrel traps. The Department has identified the use of 25 barrel traps per vessel as sustainable and comparable to 200 bucket traps as allowed in Fish and Game Code Section 9001.6.
5. Allowing more than 25 barrel traps per vessel creates an equity issue with fishermen using bucket traps to fish for hagfish. Vessels using bucket traps are limited to 200 per vessel, pursuant to Fish and Game Code Section 9001.6. The Department does not find that allowing two permittees per vessel to fish 25 barrel traps each is warranted because the 25 barrel trap limit is volumetrically equivalent to the 200 bucket trap vessel limit, which is set by Fish and Game Code Section 9001.6.
6. Fish and Game Code Section 9001.6 establishes a limit of 200 bucket traps per vessel and Fish and Game Code subdivision 9000.5(a) defines a bucket trap as 5 gallons or less in capacity. The Department finds that 25 barrel traps is volumetrically equivalent to the 200 bucket trap vessel limit set by Fish and Game Code Section 9001.6. If more than 25 barrel traps were allowed, there is the legal challenge of creating a less restrictive standard in Title 14, CCR than in Fish and Game Code. At the June 13, 2019 Commission meeting, the Department discussed the lack of statutory authority to authorize increasing the volumetric fishing capacity of barrel traps by allowing more than 25 per vessel. The Commission concurred with the Department's response, and stated that unless amended by the Legislature, the bucket trap limit established by Fish and Game Code Section 9001.6 limits the Commission's ability to authorize more than 25 barrel traps per

vessel.

7. See the Department's response to Comment A.6.
8. The Department appreciates the desire for further dialogue. As addressed in the response to Comment A.6., unless amended by the Legislature, the bucket trap limit established by Fish and Game Code Section 9001.6 limits the Commission's ability to authorize more than 25 barrel traps per vessel. This proposed regulatory change is intended to clarify the original intent of the hagfish regulation effective January 1, 2016. This previous rulemaking was noticed, and comments received and responded to according to the requirements of the Administrative Procedure Act.

B. Comment by Alan An, hagfish buyer and exporter for Anago LLC, received at June 13, 2019 Commission meeting:

1. The commenter agreed with the restrictions on buoy lines, size, and number of traps.
2. If vessels are restricted to 25 barrel traps, the fishery will die.
3. The commenter agreed with the proposal by Noah Oppenheim to allow two permittees to fish 25 barrel traps each per vessel.
4. The commenter proposed another option to allow barrel traps based on vessel length, giving examples of a 20- to 30-foot vessel being allowed 25 barrel traps, and a 30-40 foot vessel being allowed 50 barrel traps.
5. The commenter gave details about the differences between brown and black hagfish.
6. The commenter noted that Alaska, Oregon, and Washington have greater trap limits than 25 per vessel and proposed that 100 is a good trap limit number.

Response:

1. The Department acknowledges the commenter's agreement with the restrictions on buoy lines, size, and number of traps. The hagfish fishery is managed through strict gear restrictions and the proposed regulatory amendment will maintain the intended allowance of 25 barrel traps per vessel.
2. See the Department's response to Comment A.3.
3. See the Department's response to Comment A.5
4. Allowing more than 25 barrel traps per vessel creates an equity issue with fishermen using bucket traps. Vessels using bucket traps are limited to 200 per vessel regardless of vessel length (per Fish and Game Code Section 9001.6). The Department does not find that linking the number of barrel traps to vessel length is warranted

because the 25 barrel trap limit is volumetrically equivalent to the 200 bucket trap vessel limit, which is set by Fish and Game Code Section 9001.6.

5. The explanation and comment about black hagfish and Pacific hagfish are outside the scope of this rulemaking as no limits by species are being proposed.
6. Allowing more than 25 barrel traps per vessel creates an equity issue with fishermen using bucket traps. During the 2016 hagfish rulemaking, fishermen expressed concerns over fishery expansion due to allowing barrel traps and the number of barrel traps fished per vessel. The Department does not find that increasing the number of barrel traps per vessel is warranted because the 25 barrel trap limit is volumetrically equivalent to the 200 bucket trap vessel limit, which is set by Fish and Game Code Section 9001.6.

In conclusion, the Department does not find that changes to the proposed regulations are warranted considering the public comments received.

At its June 13, 2019 meeting, the Commission concurred with the Department's response to public comments received, and adopted the proposed amendments to Section 180.6, Title 14, CCR as originally proposed in the Notice of Proposed Action.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission
1416 Ninth Street, Suite 1320
Sacramento, California 95814

VIII. Location of Department Files:

Department of Fish and Wildlife
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulatory Action: 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: If the current regulations are retained, vessels may run multiple sets of 25 barrel traps, one each per permittee

(crewmember), thus increasing overall take of hagfish beyond levels that are known to be sustainable. Annual landings are relatively stable and appear sustainable at the current level. However, if more vessels increase the number of traps used, overall take of hagfish would increase. The potential effect of the No Change Alternative on the entire hagfish population is unknown, but it is possible that significant, localized depletion would occur.

Under the No Change Alternative, fishermen will continue to mark the buoys used to mark hagfish traps with their L number as required by subdivision (b) of FGC Section 9006; however, without including the California commercial boat registration number, it would be difficult for LED to determine which traps are deployed by a given vessel.

- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

X. 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 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. 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 many 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.

Updated 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 Fish and Game Commission (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 contradicts 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 (LED) 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.

Update

At its June 13, 2019 meeting, the Commission adopted the proposed amendments to Section 180.6, Title 14, CCR, concerning the commercial take of hagfish.

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.