

STAFF SUMMARY FOR DECEMBER 11-12, 2019

36. MARINE PETITIONS FOR REGULATION CHANGE**Today's Item**Information Action

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

- (A) Action on current petitions – *none scheduled*
- (B) Pending regulation petition referred to DFW for review

Summary of Previous/Future Actions

(A)

N/A

(B)

- FGC received petition #2019-004 Apr 17, 2019; Santa Monica
- FGC referred petition to DFW Jun 12-13, 2019; Redding
- **Today's action on petition Dec 11-12, 2019; Sacramento**

Background

Pursuant to Section 662, any request for FGC to adopt, amend, or repeal a regulation must be submitted on form FGC 1, "Petition to the California Fish and Game Commission for Regulation Change." Petitions received at an FGC meeting are scheduled for consideration at the next business meeting under (A), unless the petition is rejected under 10-day staff review as prescribed in subsection 662(b). A petition may be (1) denied, (2) granted, or (3) referred to committee, staff or DFW for further evaluation or information-gathering. Referred petitions are scheduled for action under (B) once the evaluation is completed and a recommendation made.

(A) *Petitions for regulation change*

No new regulation petitions are scheduled for action at this meeting. Note that *Petition #2019-002, Trap endorsement for commercial nearshore fishery permits*, was originally scheduled for action at this meeting; however, the petitioner has withdrawn the petition, as reflected in the revised meeting agenda.

(B) *Pending regulation petitions*

DFW has completed its review and prepared a memo that provides a recommendation for a petition previously referred to DFW.

Petition #2019-004: Retrieval of abandoned lobster traps (Exhibit B1). The DFW memo addresses the larger issue of potential misuse of derelict gear retrieval provisions in regulation since Apr 2017, and suggests denying the petition and allowing DFW law enforcement to investigate allegations, with an additional commitment from DFW to "meet with fishery participants at the end of the 2019/20 season to scope potential regulatory changes to improve the fishery in a comprehensive rulemaking."

Significant Public Comments (N/A)

STAFF SUMMARY FOR DECEMBER 11-12, 2019

Recommendation

- (A) **N/A**
- (B) **FGC staff:** Deny Petition #2019-004 for the reasons outlined in this summary and exhibit, and request that DFW provide an update to MRC following the future meeting it plans to have with fishery participants per Exhibit B2.
DFW: Deny Petition #2019-004 for reasons set forth in the DFW memo (Exhibit B2).

Exhibits

- B1. [Petition #2019-004, received Feb 4, 2019](#)
- B2. [DFW memo, received Nov 19, 2019](#)

Motion/Direction

Moved by _____ and seconded by _____ that the Commission adopts the staff recommendation for Petition #2019-004.

OR

Moved by _____ and seconded by _____ that the Commission adopts the following action for Petition #2019-004: _____.



Tracking Number: (2019-004)

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

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

SECTION I: Required Information.

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

1. Person or organization requesting the change (Required)

Name of primary contact person: Mike Conroy

Address:

Telephone number:

Email address:

2. Rulemaking Authority (Required) - Reference to the statutory or constitutional authority of the Commission to take the action requested: FGC 1050, 8254(a)

3. Overview (Required) - Summarize the proposed changes to regulations: Add: "No lobster trap will be deemed abandoned during the period when lobster traps can legally be deployed as described in subsection (a)."

4. Rationale (Required) - Describe the problem and the reason for the proposed change: In certain locations, some permitted commercial lobster fishermen are having their traps, line and buoys (collectively "the gear") stolen by other permitted commercial lobster fisherman. Purportedly, the individual suspected of stealing the gear is claiming he is allowed to have the gear by claiming they are "derelict lobster traps" under current regulations. Because he is declaring them abandoned, the rightful owner of the gear is subject to arrest for theft if they take any actions to recover the stolen gear. The effect of this is that law abiding commercial fishermen whose gear is being stolen are disadvantaged as follows: (A) They are fishing less gear which results in lost opportunity; (B) They have to replace the gear at considerable expense; (C) They are unable to get replacement trap tags because they have not cumulatively lost at least 75 trap tags. Note – at the December 2018 FGC meeting we will be asking the MRC to schedule a discussion at its March 2019 meeting on the issue of replacement of loss tags

SECTION II: Optional Information

5. Date of Petition: November 29



6. Category of Proposed Change

- Sport Fishing
- Commercial Fishing
- Hunting
- Other, please specify:

7. The proposal is to: *(To determine section number(s), see current year regulation booklet or <https://govt.westlaw.com/calregs>)*

- Amend Title 14 Section(s):122.2(h)(1)
- Add New Title 14 Section(s):
- Repeal Title 14 Section(s):

8. If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition

Or Not applicable.

9. Effective date: If applicable, identify the desired effective date of the regulation. If the proposed change requires immediate implementation, explain the nature of the emergency: Prior to opening of 2019 commercial lobster season

10. Supporting documentation: Identify and attach to the petition any information supporting the proposal including data, reports and other documents: Unavailable at this time due to an ongoing LED investigation

11. Economic or Fiscal Impacts: Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing: Should be a positive economic impact to law abiding permitted commercial lobster fishermen

12. Forms: If applicable, list any forms to be created, amended or repealed:

SECTION 3: FGC Staff Only

Date received: [Received by email on Monday, February 4, 2019 at 7:51 AM.](#)

FGC staff action:

- Accept - complete
- Reject - incomplete
- Reject - outside scope of FGC authority

Tracking Number 2019-004

Date petitioner was notified of receipt of petition and pending action: April 17, 2019

Meeting date for FGC consideration: June 12-13, 2019

FGC action:



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

Memorandum

Date: November 18, 2019

To: Melissa Miller-Henson
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director

Subject: Petition #2019-004: Revise Existing Regulation Regarding Retrieval of Abandoned Lobster Traps

Background

On June 13, 2019, the California Fish and Game Commission (Commission) referred Petition #2019-004 to the California Department of Fish and Wildlife (Department) for review and recommendation. The petitioner requests a change to commercial lobster fishing regulations concerning the retrieval of abandoned lobster traps in section 122.2, Title 14, California Code of Regulations. Current provisions (subsection 122.2(h), Title 14, CCR) allow a lobster operator permit holder to retrieve up to six lost, damaged, abandoned, or otherwise derelict lobster traps of another lobster permit holder during the spiny lobster season without written permission or a waiver.

The petition proposes to add language to the current regulation specifying the condition under which a lobster trap can be considered "abandoned" to reduce the purported misuse of this provision. Specifically, the petitioner proposes the following text be added to subsection 122.2(h), Title 14, CCR: "No lobster trap will be deemed abandoned during the period when lobster traps can legally be deployed as described in subsection (a)."

Department Evaluation

The Department has reviewed the above referenced petition and identified a regulation change is not needed at this time. The original basis for subsection 122.2(h), Title 14, CCR, is to accommodate instances when it is necessary to retrieve lost, damaged, abandoned, or otherwise derelict traps during the season to help reduce potential impact of fishing gear on living marine resources and underwater habitat. The proposed change would render the current gear retrieval provision ineffective as a means to reduce gear loss during the lobster fishing season. Therefore, the Department recommends not changing current regulations at this time.

Melissa Miller-Henson, Executive Director
Fish and Game Commission
November 18, 2019
Page 2 of 2

To address the purported abuses of the provision, Department law enforcement is actively investigating the problem described in the petition and evaluating the scope of the issue and need for regulatory change. In addition, fishery participants have recently conveyed additional suggestions for regulatory change. The Department plans to meet with fishery participants at the end of the 2019/20 season to scope potential regulatory changes to improve the fishery in a comprehensive rulemaking.

The Department recommends rejecting the petition based on the above information. If you have any questions or need additional information, please contact Tom Mason by telephone at (858) 637-7100, or via email at Tom.Mason@wildlife.ca.gov.

ec: Stafford Lehr, Deputy Director
Wildlife and Fisheries Branch
Stafford.Lehr@Wildlife.ca.gov

Craig Shuman D. Env.
Regional Manager
Marine Region
Craig.Shuman@wildlife.ca.gov

Mike Stefanak, Assistant Chief
Law Enforcement Division
Mike.Stefanak@wildlife.ca.gov

Sonke Mastrup
Environmental Program Manager
Marine Region
Sonke.Mastrup@wildlife.ca.gov

Robert Puccinelli, Captain
Law Enforcement Division
Robert.Puccinelli@wildlife.ca.gov

Tom Mason, Senior Environmental
Scientist (Supervisor)
Marine Region
Tom.Mason@wildlife.ca.gov