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Wildlife Heritage and Conservation
Since 1870

January 13, 2020

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a 15-day continuation notice for the Experimental Fishing Permit (EFP) Program (Phase I) regulations, published in the California Regulatory Notice Register on August 23, 2019, Notice No. Z2019-0813-01, and adopted by the Fish and Game Commission (Commission) on October 10, 2019 in Valley Center.

This provides notice of proposed changes to the adopted regulatory language in Sections 90 and 704, Title 14, California Code of Regulations (CCR), and form DFW 1085, Experimental Fishing Permit Terms and Conditions, incorporated by reference in Section 704, Title 14, CCR.

These changes are sufficiently related to the originally proposed regulatory text such that the public was adequately placed on notice that the change could result from the originally proposed regulatory action. These changes will benefit the regulations through adding clarity to their purpose and enforcement, and will not substantially alter the original purpose of the regulations.

The proposed changes are clearly indicated on the attached amended regulatory text as follows: additions of newly proposed text are shown in double underline; ~~deletions of formerly proposed text~~ are shown in underline and strikeout. Consistent with the original notice for this rulemaking, formerly proposed text that is not affected by the changes described below is indicated in underline for new text.

Unless otherwise specified, all section references in the changes described below are to Title 14, CCR:

Changes to Section 90:

- The regulatory text in subsection 90(a) has been changed to clarify that the Department of Fish and Wildlife (Department) is the agency that issues EFPs following approval by the Commission.
- The EFP fee payment deadline in subsection 90(a)(4) has been clarified as a hard deadline of March 1 of each year to allow for Department enforcement of this deadline. To allow applicants adequate time to submit the fee payment for the first year the regulations take effect, an exception has been added for fees due prior to April 1, 2020, allowing fee payment to be received by March 31. The originally proposed fee payment

deadline of March 1 will be retained for subsequent years.

- Duplicative language in subsection 90(b)(2) has been removed to simplify and clarify the purpose of the regulatory text. The approval of EFP conditions by the Commission is already stated in Fish and Game Code (FGC) subdivision 1022(a)(2) and reflected in the process outlined in subsection 90(b)(2)(A).
- New subsections 90(c) and (d) provide clarification of the grounds for which the Department may initiate disciplinary measures (i.e. suspension, revocation, or denial of an EFP) for violating the terms and conditions of the EFP, and the formal process by which an EFP applicant or permittee may petition the decision of the Department to initiate disciplinary measures.

Changes to Section 704 and form DFW 1085:

- The date of form DFW 1085, incorporated by reference into Section 704, has been changed to reflect the revisions made to the proposed form. This change will enable the regulated public to visibly differentiate between the former and changed form DFW 1085.
- The Revision Date field on form DFW 1085 has been removed, as the form header already contains a field for the version date that is sufficient for version tracking purposes.
- Standard Term 7 has been changed to include a requirement for the EFP permittee or second operator to provide 24-hour notice to the Department of planned fishing activities under the EFP. Observation of permit activities by Department staff is a key component of the experimental nature of the EFP that was noticed as part of the original regulatory proposal, and this change clarifies the process for coordination between Department staff and permittees such that the required observations can be conducted.
- The introductory description of Special Conditions has been changed to clarify the circumstances when Special Conditions are deemed necessary by the Commission, and to improve consistency with the regulatory language in Section 90.
- Special Condition 5 has been changed to reduce the required minimum number of active fishing days from 50 to 30 days per year. Actual experience of permittees and Department staff engaged in the experimental box crab research program indicates that 30 days per year is a more achievable level of participation and is adequate to the purpose of the research program.
- Special Conditions 7b, 7c, and 7d have been changed to remove duplicative language that is already found in existing Title 14, CCR regulations and/or Fish and Game Code, and to specify the locations of these trap design specifications within existing law.
- Special Condition 8 has been changed to remove language concerning the marking of EFP traps, as effective May 1, 2020, the gear marking of commercial traps will be required to comply with FGC Section 9005. The requirements of this code section will be implemented by the Department's new gear marking program for trap fisheries, and thus it is unnecessary to provide a different standard within the EFP Special Conditions.

- Special Condition 14 has been removed to eliminate a redundancy with the current commercial fishing requirement for using E-Tix in Section 197. Effective July 1, 2019, all commercial fishery landings are required to be recorded and submitted electronically using E-Tix, and thus Special Condition 14 is unnecessarily duplicative and has been removed.

Grammatical Changes:

In response to the above outlined changes, minor grammatical changes and renumbering of specific subsections have been made to the proposed regulatory text in Sections 90 and 704, and form DFW 1085.

Availability of Documents:

Documents relating to the proposed changes are available for inspection at the Fish and Game Commission office at 1416 Ninth Street, Suite 1320, Sacramento, California, 95814, Monday through Friday, except holidays between the hours of 8:00 a.m. and 5:00 p.m., and on the Commission's website at <https://fgc.ca.gov/Regulations/2020-New-and-Proposed>.

Comments must be emailed to fgc@fgc.ca.gov or mailed to Melissa Miller-Henson, Executive Director, California Fish and Game Commission, P.O. Box 944209, Sacramento, California, 94244-2090, from January 13 through January 28, 2020.

Sincerely,



Craig Castleton

Associate Governmental Program Analyst

Attachments