

# California Fish and Game Commission Meeting Binder



**March 23, 2020  
Teleconference**

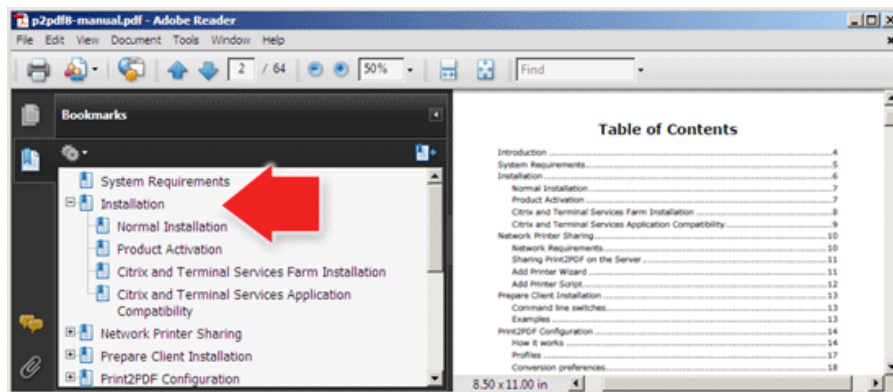
## EASY GUIDE TO USING THE BINDER

Note: We make every effort to ensure that documents we produce are compliant with Americans with Disabilities Act standards, pursuant to state and federal law; however, some materials included in our meeting binders that are produced by other organizations and members of the public may not be compliant.

1. Download and open the binder document using your Adobe Acrobat program/app.
2. If a bookmark panel does not automatically appear on either the top or left side of the screen, click/tap on the “bookmark symbol” located near the top left-hand corner.



3. To make adjustments to the view, use the Page Display option in the View tab. You should see something like:



4. We suggest leaving open the bookmark panel to help you move efficiently among the staff summaries and numerous supporting documents in the binder. It's helpful to think of these bookmarks as a table of contents that allows you to go to specific points in the binder without having to scroll through hundreds of pages.
5. You can resize the two panels by placing your cursor in the dark, vertical line located between the panels and using a long click /tap to move in either direction. ⇄
6. You may also adjust the sizing of the documents by adjusting the sizing preferences located on the Page Display icons found in the top toolbar or in the View tab.
7. Upon locating a staff summary for an agenda item, notice that you can obtain more information by clicking/tapping on any item underlined in blue.
8. Return to the staff summary by simply clicking/tapping on the item in the bookmark panel.
9. Do not hesitate to contact staff if you have any questions or would like assistance.

## OVERVIEW OF FISH AND GAME COMMISSION TELECONFERENCE MEETING

- This year marks the beginning of the 150<sup>th</sup> year of operation of the California Fish and Game Commission in partnership with the California Department of Fish and Wildlife. Our goal is the preservation of our heritage and conservation of our natural resources through informed decision making. These meetings are vital in achieving that goal. In that spirit, we provide the following information to be as effective and efficient toward that end. Welcome and please let us know if you have any questions.
- We are operating under the Bagley-Keene Open Meeting Act and these proceedings are being recorded and broadcast via telephone.
- Items may be heard in any order pursuant to the determination of the presiding commissioner.
- The amount of time for each agenda item may be adjusted based on time available and the number of speakers.
- We will ask how many speakers we have at each location before taking public comment; please be prepared when your name is called.
- When you speak, please state your name and any affiliation. Please be respectful. Disruptions from the audience will not be tolerated. Time is precious so please be concise.
- To receive meeting agendas and regulatory notices about those subjects of interest to you, please visit the Commission's website, [www.fgc.ca.gov](http://www.fgc.ca.gov), and sign up for our electronic mailing lists.
- All petitions for regulation change must be submitted in writing on the authorized petition form, FGC 1, Petition to the California Fish and Game Commission for Regulation Change, available on the Commission's website.
- **Reminder!** Please silence your mobile devices and computers to avoid interruptions.

# INTRODUCTIONS FOR FISH AND GAME COMMISSION MEETINGS

## **Fish and Game Commission**

Eric Sklar	President (Saint Helena)
Samantha Murray	Vice President (Del Mar)
Jacque Hostler-Carmesin	Member (McKinleyville)
Russell Burns	Member (Napa)
Peter Silva	Member (Jamul)

## **Commission Staff**

Melissa Miller-Henson	Executive Director
Rachel Ballanti	Deputy Executive Director
David Thesell	Program Manager
Craig Castleton	Program Analyst
Sherrie Fonbuena	Program Analyst
Rose Dodgen	Sea Grant State Fellow

## **California Department of Fish and Wildlife**

Craig Shuman	Manager, Marine Region
Tom Mason	Senior Environmental Scientist (Supervisor)
Marina Som	Environmental Scientist

I would also like to acknowledge special guests who are present:  
*(i.e., elected officials, including tribal chairpersons, and other special guests)*

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**Commissioners**  
**Eric Sklar**, President  
Saint Helena

**Samantha Murray**, Vice President  
Del Mar

**Jacque Hostler-Carmesin**, Member  
McKinleyville

**Russell E. Burns**, Member  
Napa

**Peter S. Silva**, Member  
Jamul

STATE OF CALIFORNIA  
Gavin Newsom, Governor

## Fish and Game Commission



**Melissa Miller-Henson**  
**Executive Director**  
P.O. Box 944209  
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(916) 653-4899  
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[www.fgc.ca.gov](http://www.fgc.ca.gov)

*Wildlife Heritage and Conservation*  
*Since 1870*

### **REVISED\* MEETING AGENDA - TELECONFERENCE** **March 23, 2020, 8:00 AM**

#### ***Participate via Teleconference***

Call (877) 336-1831; access code 940535

**\* This agenda has been revised to remove the in-person participation location in Sacramento. Consistent with Governor Newsom's Executive Order N-29-20, the public and Commissioners will participate in the meeting exclusively by teleconference.**

**Note: See important meeting deadlines and procedures at the end of the agenda.**

Call to order/roll call to establish quorum

**1. Consider approving agenda and order of items**

**2. General public comment for items not on agenda**

Receive public comment regarding topics within the Commission's authority that are not included on the agenda.

Note: The Commission may not discuss or take action on any matter raised during this item, except to decide whether to place the matter on the agenda of a future meeting (sections 11125 and 11125.7(a), Government Code).

**3. Experimental Fishing Permit Program (Phase I)**

Discuss and consider adopting the regulatory text as originally noticed and with the sufficiently-related changes to the originally-noticed and adopted regulatory text for experimental fishing permit (EFP) regulations, as outlined in two 15-day notices distributed to the public on January 13, 2020 and January 24, 2020.

(Adopt Chapter 5.6, Section 90; and adopt Section 704, Title 14, CCR)

Adjourn

## California Fish and Game Commission 2020 Meeting Schedule

**Note: As meeting dates and locations can change, please visit [www.fgc.ca.gov](http://www.fgc.ca.gov) for the most current list of dates and locations.**

Meeting Date	Commission Meeting	Committee Meeting
April 15 - 16	<b>Teleconference and webinar</b>	
May 14	<b>Teleconference and webinar</b> Santa Rosa, Sacramento, Arcata and San Diego	
May 14		<b>Wildlife Resources</b> Justice Joseph A. Rattigan Building Conference Room 410 50 D Street, 4 <sup>th</sup> Floor Santa Rosa, CA 95404
June 24 - 25	Holiday Inn Orange County Airport 2726 S. Grand Avenue Santa Ana, CA 92705	
July 21		<b>Marine Resources</b> San Clemente area
August 18		<b>Tribal</b> River Lodge Conference Center 1800 Riverwalk Drive Fortuna, CA 95540
August 19 - 20	River Lodge Conference Center 1800 Riverwalk Drive Fortuna, CA 95540	
September 17		<b>Wildlife Resources</b> Natural Resources Building Redwood Room 1416 Ninth Street, 14 <sup>th</sup> Floor Sacramento, CA 95814
October 14 - 15	Elihu M Harris Building Auditorium 1515 Clay Street Oakland, CA 94612	
November 9		<b>Tribal</b> Monterey area
November 10		<b>Marine Resources</b> Monterey area
December 9 - 10	San Diego area	

## **OTHER 2020 MEETINGS OF INTEREST**

### **Association of Fish and Wildlife Agencies**

- September 13-16, Sacramento, CA

### **Pacific Fishery Management Council**

- April 3-10, Vancouver, WA
- June 11-18, San Diego, CA
- September 10-17, Spokane, WA
- November 13-20, Garden Grove, CA

### **Pacific Flyway Council**

- August 28 (location TBD)

### **Western Association of Fish and Wildlife Agencies**

- July 9-14, Park City, UT

### **Wildlife Conservation Board**

- April 1, Sacramento (Stream Flow Enhancement Board meeting)
- May 20, Sacramento, CA
- August 26, Sacramento, CA
- November 18, Sacramento, CA

## IMPORTANT COMMISSION MEETING PROCEDURES INFORMATION

### WELCOME TO A MEETING OF THE CALIFORNIA FISH AND GAME COMMISSION

This year marks the beginning of the 150th year of operation of the Commission in partnership with the California Department of Fish and Wildlife. Our goal is the preservation of our heritage and conservation of our natural resources through informed decision making; Commission meetings are vital in achieving that goal. In that spirit, we provide the following information to be as effective and efficient toward that end. Welcome and please let us know if you have any questions.

### PERSONS WITH DISABILITIES

Persons with disabilities needing reasonable accommodation to participate in public meetings or other Commission activities are invited to contact the Reasonable Accommodation Coordinator at (916) 651-1214. Requests for facility and/or meeting accessibility should be received as soon as possible prior to the meeting to ensure the request can be accommodated.

### STAY INFORMED

To receive meeting agendas and regulatory notices about those subjects of interest to you, please visit the Commission's website, [www.fgc.ca.gov](http://www.fgc.ca.gov), to sign up on our electronic mailing lists.

### SUBMITTING WRITTEN COMMENTS

The public is encouraged to comment on any agenda item. Submit written comments by one of the following methods: E-mail to [fgc@fgc.ca.gov](mailto:fgc@fgc.ca.gov); mail to California Fish and Game Commission, P.O. Box 944209, Sacramento, CA 94244-2090; delivery to California Fish and Game Commission, 1416 Ninth Street, Suite 1320, Sacramento, CA 95814; or hand-deliver to a Commission meeting. Materials provided to the Commission may be made available to the general public.

### COMMENT DEADLINES

The **Comment Deadline** for this meeting is 5:00 p.m. on **March 18, 2020**. Written comments received at the Commission office by this deadline will be made available to Commissioners prior to the meeting.

After this deadline, written comments may be delivered in person to the meeting – Please bring **two** copies of written comments to the meeting.

### VISUAL PRESENTATIONS/MATERIALS

Visual presentations will not be allowed at this meeting.

### SPEAKING AT THE MEETING

To speak on an agenda item, please complete a "Speaker Card" and give it to the designated staff member before the agenda item is announced. Cards will be available near the entrance of the meeting room. Only one speaker card is necessary for speaking to multiple items.

1. Speakers will be called in groups; please line up when your name is called.
2. When addressing the Commission, give your name and the name of any organization you represent, and provide your comments on the item under consideration.
3. If there are several speakers with the same concerns, please appoint a spokesperson and avoid repetitive testimony.



4. The presiding commissioner will allot between one and three minutes per speaker per agenda item, subject to the following exceptions:
  - a. The presiding commissioner may allow up to five minutes to an individual speaker if a minimum of three individuals who are present when the agenda item is called have ceded their time to the designated spokesperson, and the individuals ceding time forfeit their right to speak to the agenda item.
  - b. Individuals may receive advance approval for additional time to speak if requests for additional time to speak are received by email or delivery to the Commission office by the **Comment Deadline**. The president or designee will approve or deny the request no later than 5:00 p.m. two days prior to the meeting.
  - c. An individual requiring an interpreter is entitled to at least twice the allotted time pursuant to Government Code Section 11125.7(c).
  - d. An individual may receive additional time to speak to an agenda item at the request of any commissioner.
5. If you are presenting handouts/written material to the Commission at the meeting, please provide **two** copies to the designated staff member just prior to speaking.

## STAFF SUMMARY FOR MARCH 23, 2020 TELECONFERENCE

**2. GENERAL PUBLIC COMMENT****Today's Item****Information** **Action** 

Receipt of verbal public comments for items not on the agenda.

**Summary of Previous/Future Actions (N/A)****Background**

Today's agenda item is to receive verbal public comments for items not on the agenda. Under the Bagley-Keene Open Meeting Act, FGC cannot act on any matter not included on the agenda, except to schedule issues raised by the public for consideration at future meetings.

Comments submitted in writing are traditionally held for receipt at regularly scheduled in-person FGC meetings. Written comments submitted following the February 21, 2020 FGC meeting will be received at the April 15-16, 2020 meeting, which will be held via teleconference and webinar, consistent with Governor Newsom's Executive Order N-29-20.

**Significant Public Comments (N/A)****Recommendation**

Consider whether any new future agenda items are needed to address issues raised during public comment.

**Exhibits (N/A)****Motion/Direction (N/A)**

## STAFF SUMMARY FOR MARCH 23, 2020 TELECONFERENCE

**3. EXPERIMENTAL FISHING PERMIT PROGRAM (PHASE I)****Today's Item**Information Action 

Discuss and consider adopting the regulatory text as originally noticed and with the sufficiently-related changes to the originally-noticed and adopted regulatory text for experimental fishing permit (EFP) regulations, as outlined in two 15-day notices distributed to the public on Jan 13, 2020 and Jan 24, 2020.

**Summary of Previous/Future Actions**

- |  |                                     |
|--|-------------------------------------|
| • Notice hearing                             | Aug 7-8, 2019; Sacramento           |
| • Discussion/adoption hearing                | Oct 9-10, 2019; Valley Center       |
| • Rulemaking file submitted to OAL           | Oct 16, 2019                        |
| • Rulemaking file withdrawn from OAL         | Dec 2, 2019                         |
| • Published first 15-day notice              | Jan 13, 2020                        |
| • End of first 15-day comment period         | Jan 28, 2020                        |
| • Published second 15-day notice             | Jan 24, 2020                        |
| • End of second 15-day comment period        | Feb 10, 2020                        |
| • Rulemaking file re-submitted to OAL        | Feb 27, 2020                        |
| • <b>Today's discussion/adoption hearing</b> | <b>Mar 23, 2020; Teleconference</b> |

**Background**

In Oct 2019, FGC adopted regulations to establish sections 90 and 704, Title 14, concerning the issuance of EFPs, and form DFW 1085, incorporated by reference in Section 704 (collectively referred to as phase 1 EFP regulations).

As described in greater detail within the staff summaries for the Aug and Oct 2019 FGC meetings (exhibits 1 and 2), DFW currently administers an experimental gear permit (EGP) program to research the potential for developing a new, targeted, box crab fishery in California. In Dec 2018, pursuant to Fish and Game Code Section 8606, FGC approved issuing eight EGPs associated with the box crab research; these eight permits will expire on Mar 31, 2020.

Fish and Game Code Section 8606 was repealed effective Jan 1, 2019, eliminating FGC's ability to renew or authorize any new EGPs. A new Fish and Game Code Section 1022 was created, which authorizes an EFP program upon FGC adopting regulations. In 2019, FGC adopted phase 1 EFP regulations pursuant to Fish and Game Code Section 1022. The regulations established a process for issuing EFPs only to those fishermen approved by FGC in Dec 2018 to receive box crab EGPs, thus allowing the continuation of the box crab research beyond Mar 31, 2020.

Subsequent to FGC adopting the phase I regulations in Oct 2019 and staff submitting the rulemaking file to the Office of Administrative Law (OAL), OAL provided feedback that minor changes to the adopted regulatory text were required to add clarity; these minor changes were sufficiently-related to the originally proposed regulatory text such that the public was

## STAFF SUMMARY FOR MARCH 23, 2020 TELECONFERENCE

adequately placed on notice that the change could result from the originally proposed regulatory action (Exhibit 3). The changes will benefit the adopted regulations by adding clarity and improving their enforceability.

On Dec 2, 2019, FGC staff withdrew the rulemaking file from OAL and, on Jan 13, 2020, issued a 15-day notice (Exhibit 4) that provided public notice of the sufficiently-related proposed changes to the adopted phase 1 regulations. The 15-day notice contained unintentional formatting and grammatical errors in the proposed regulatory text, and was superseded by the 15-day notice issued by FGC staff on Jan 24, 2020 (Exhibit 5).

After completing the 15-day comment period, FGC staff re-submitted the rulemaking file to OAL on Feb 27, 2020. Upon reviewing the re-submitted rulemaking file, OAL requested that FGC convene a meeting to review and consider approving the proposed regulations, including the sufficiently-related changes outlined in the two 15-day notices.

### Significant Public Comments

- No comments were received during the first or second 15-day notices in opposition to the proposed changes to the regulatory language.
- One comment was received from a fishery organizer representing Santa Barbara trappers (Exhibit 6) writing in response to a stakeholder engagement meeting held by DFW and FGC, in collaboration with The Nature Conservancy to discuss proposals for the EFP (Phase II) rulemaking. The comment pertains to the second phase rulemaking and, thus, is outside the scope of the proposed phase 1 EFP regulations; DFW has evaluated the comment and recommends that no additional changes to the proposed regulations are warranted.

### Recommendation

**FGC staff:** Adopt the proposed regulation changes as detailed in the initial statement of reasons and two 15-day notices distributed to the public on Jan 13, 2020 and Jan 24, 2020.

### Exhibits

1. [Staff summary from Aug 7-8, 2019 FGC meeting](#) (for background only)
2. [Staff summary from Oct 9-10, 2019 FGC meeting](#) (for background only)
3. [Initial statement of reasons](#)
4. [15-day notice, dated Jan 13, 2020](#)
5. [15-day notice, dated Jan 24, 2020](#)
6. [Email from Christopher Miller, received Jan 29, 2020](#)

### Motion/Direction

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission adopts the proposed regulations in Section 90 and Section 704, related to issuing experimental fishing permits, including the regulatory text as originally noticed and the sufficiently-related changes to the originally-noticed and adopted regulatory text as outlined in two 15-day notices distributed to the public on January 13, 2020 and January 24, 2020.

## STAFF SUMMARY FOR AUGUST 7-8, 2019

## 19. EXPERIMENTAL FISHING PERMIT PROGRAM (PHASE 1)

## Today's Item

Information Action 

Consider authorizing publication of notice of intent to adopt experimental fishing permit (EFP) regulations, to allow for issuing EFPs to fishermen that were issued experimental gear permits in 2018 for the box crab experimental gear permit program.

## Summary of Previous/Future Actions

- |  |                                  |
|--|----------------------------------|
| • FGC approves two-phase rulemaking approach                     | Jun 12-13, 2019; Redding         |
| • DFW update and MRC discussion of two-phase rulemaking approach | Jul 11, 2019; MRC, San Clemente  |
| • <b>Today's notice hearing</b>                                  | <b>Aug 7-8, 2019; Sacramento</b> |
| • Discussion/adoption hearing                                    | Oct 9-10, 2019; Valley Center    |

## Background

At its Dec 12-13, 2018 meeting, FGC approved issuing experimental gear 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 developing a new targeted fishery in California (hereinafter referred to as the box crab experimental program). As discussed in a previous staff summary (Exhibit 4), pursuant to Fish and Game Code Section 8606 FGC approved eight experimental gear permits for issuance by DFW; the eight permits will expire on Mar 31, 2020.

Fish and Game Code Section 8606 was repealed effective Jan 1, 2019, thus eliminating FGC's ability to renew or authorize any new experimental gear permits. A new Fish and Game Code Section 1022 was created, which provides for establishing an EFP program upon FGC adopting regulations. Section 1022 also provides FGC with expanded authority to authorize, for research, educational, limited testing, data collection, compensation fishing, conservation engineering, or exploratory fishing, or any combination of these purposes, an EFP that allows commercial or recreational marine fishing activity otherwise prohibited by state fishing laws or regulations.

With the repeal of Fish and Game Code Section 8606, and absent regulations implementing Fish and Game Code Section 1022, the box crab experimental program cannot be continued beyond the Mar 31, 2020 expiration of the existing permits. To provide a pathway for the box crab experimental program to continue while a new EFP program is thoughtfully developed, DFW proposed a two-phase rulemaking approach that FGC approved in Jun 2019. Phase 1 proposes a process for issuing EFPs to fishermen approved for box crab experimental fishing gear permits in Dec 2018. Thus, today's item is intended to ensure that the current box crab experimental program can continue while a larger programmatic rulemaking (Phase 2) can be developed with stakeholder engagement.

**Proposed Regulations**

The proposed regulations in Phase 1 will add new Chapter 5.6, Experimental Fishing Permit Program, containing new Section 90, Issuance of Experimental Fishing Permits, to Title 14. Proposed Section 90 will establish the process for FGC approval and DFW issuance of EFPs

**STAFF SUMMARY FOR AUGUST 7-8, 2019**

to those applicants previously approved to receive a box crab experimental gear permit, and includes the following concepts:

- The applicant shall submit a written request for an EFP at least 60 days prior to the expiration date of their current experimental gear permit.
- No more than eight valid EFPs will be issued at any one time.
- FGC may establish standard terms applicable to all fishery participants.
- FGC 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.
- DFW shall notify a permittee at least 30 days before recommending a change to the special conditions of the EFP issued to that permittee.
- Access to future permits, if a fishery is developed, is not implied by participation in the EFP program.

The proposed regulations will also add new Section 704, Experimental Fishing Permits; Fees and Forms to Title 14, which will stipulate the annual box crab EFP fee of \$4,487.75. Pursuant to Fish and Game Code subdivision 1022(g), FGC is authorized to charge a fee as necessary to fully recover, but not exceed, all reasonable implementation and administrative costs of DFW and FGC related to the EFP. A detailed discussion of these costs can be found in the draft initial statement of reasons (ISOR; Exhibit 2) and draft economic and fiscal impact statement (Std 399; Exhibit 6).

Proposed Section 704 will also incorporate by reference the Experimental Fishing Permit Terms and Conditions Form DFW 1085 (New 08/01/2019) (Exhibit 3), 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. The proposed standard terms and special conditions are consistent with those used to issue the experimental fishing gear permits (Exhibit 5).

### **Significant Public Comments**

A fishery organizer expressed inspiration from DFW's work to date on the box crab EFPs and intends to convene a fisherman's data review committee to discuss approaches to experimental fisheries, beginning with a discussion of whale entanglement and marine mammal conflict resolution (Exhibit 8).

### **Recommendation**

**FGC staff:** Authorize publication of the notice and request the effective date as recommended by DFW.

**DFW:** Authorize publication of the notice as detailed in the draft ISOR (Exhibit 2), and request that the Office of Administrative Law make the regulation effective on or before January 1, 2020 (Exhibit 1).

**STAFF SUMMARY FOR AUGUST 7-8, 2019**

**Exhibits**

1. DFW memo transmitting ISOR and providing overview of California Environmental Quality Act categorical exemptions, received Jul 22, 2019
2. Draft ISOR
3. Draft form DFW 1085, Experimental Fishing Permit Terms and Conditions
4. Staff summary for Agenda Item 11, Dec 12-13, 2018 FGC meeting (for background only)
5. Box crab experimental gear permit terms and conditions, dated Dec 20, 2018 (for background only)
6. Draft economic and fiscal impact statement (Std. 399)
7. Draft notice of exemption
8. Email from Chris and Dominique Miller, concerning a fisherman's data review committee to discuss experimental fisheries, received Jul 25, 2019
9. DFW presentation

**Motion/Direction**

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission authorizes publication of a notice of its intent to adopt Chapter 5.6, containing Section 90, and adopt Section 704, related to experimental fishing permit regulations.

## STAFF SUMMARY FOR OCTOBER 9-10, 2019

**16. EXPERIMENTAL FISHING PERMIT PROGRAM (PHASE 1)****Today's Item**Information Action 

Discuss and consider adopting proposed changes to experimental fishing permit (EFP) regulations, to allow for issuing EFPs to fishermen who were issued experimental gear permits (EGPs) in 2018 for the box crab EGP program.

**Summary of Previous/Future Actions**

- |  |                                      |
|--|--------------------------------------|
| • FGC approves two-phase rulemaking approach | Jun 12-13, 2019; Redding             |
| • DFW update and MRC discussion              | Jul 11, 2019; MRC, Ventura           |
| • Notice hearing                             | Aug 7-8, 2019; Sacramento            |
| • <b>Today's discussion/adoption hearing</b> | <b>Oct 9-10, 2019; Valley Center</b> |

**Background**

In Aug 2019, FGC authorized publishing notice of proposed adoption of sections 90 and 704, concerning the issuance of EFPs, as Phase 1 of a two-phase rulemaking process.

As described in greater detail within the staff summary for the Aug 2019 FGC meeting (Exhibit 1), DFW currently administers an EGP program for the box crab fishery, in order to research the potential for developing a new targeted fishery in California (hereinafter referred to as the box crab experimental program). In Dec 2018, pursuant to Fish and Game Code Section 8606 (2017), FGC approved eight EGPs associated with the box crab experimental program for issuance by DFW; these eight permits will expire on Mar 31, 2020.

Fish and Game Code Section 8606 was repealed effective Jan 1, 2019, thus eliminating FGC's ability to renew or authorize any new EGPs. A new Fish and Game Code Section 1022 was created, which provides for establishing an EFP program upon FGC adopting regulations. With the repeal of Section 8606, and absent regulations implementing the new Section 1022, the box crab experimental program cannot be continued beyond the Mar 31, 2020 expiration of the existing permits.

Per the two-phase rulemaking approach approved by FGC in Jun 2019 (see Exhibit 1), this Phase 1 rulemaking proposes a process for issuing EFPs pursuant to Fish and Game Code Section 1022 only to fishermen approved by FGC in Dec 2018 for box crab EGPs. Adopting the proposed regulations in this rulemaking (Phase 1) will ensure that the current box crab experimental program can continue while a larger programmatic rulemaking (Phase 2) can be developed with stakeholder engagement.

**Proposed Regulations**

The proposed regulations will add to Title 14 a new Chapter 5.6, Experimental Fishing Permit Program, containing new Section 90, Issuance of Experimental Fishing Permits. The proposed Section 90 will establish a process for FGC approval and DFW issuance of EFPs to those applicants previously approved to receive a box crab EGP, and includes the following concepts:

- No more than eight valid EFPs will be issued at any one time.



**STAFF SUMMARY FOR OCTOBER 9-10, 2019**

- An applicant shall submit a written request for an EFP at least 60 days prior to the expiration date of their current EGP.
- FGC may establish standard terms applicable to all fishery participants.
- FGC 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.
- DFW shall notify a permittee at least 30 days before recommending a change to the special conditions of the EFP issued to that permittee.
- Access to future permits, if a fishery is developed, is not implied by participation in the EFP program.

The proposed regulations will also add new Section 704, Experimental Fishing Permits; Fees and Forms to Title 14, which will stipulate an annual box crab EFP fee of \$4,487.75. Pursuant to Fish and Game Code, subdivision 1022(g), FGC is authorized to charge a fee as necessary to fully recover, but not exceed, all reasonable implementation and administrative costs of DFW and FGC related to the EFP. A detailed discussion of these costs can be found in the initial statement of reasons (ISOR; Exhibit 2) and economic and fiscal impact statement (Std 399; Exhibit 3).

Proposed Section 704 will also incorporate by reference the Experimental Fishing Permit Terms and Conditions Form DFW 1085 (New 08/01/2019) (Exhibit 4), 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. The proposed standard terms and special conditions are consistent with those used to issue the box crab EGPs (Exhibit 5).

***California Environmental Quality Act (CEQA)***

A notice of exemption (Exhibit 6) has been drafted consistent with FGC staff's recommendation to rely on two CEQA categorical exemptions (Class 6 and Class 7) for the proposed regulation changes. Staff has reviewed all of the available information possessed by FGC relevant to the issue, including the analysis and rationale presented in exhibits 6 and 7, and does not believe that reliance on these categorical exemptions is precluded by the exceptions set forth in CEQA Guidelines Section 15300.2.

**Significant Public Comments**

Two comments were received during the public comment period. DFW has provided a detailed summary of and response to the individual comments and, for the reasons set forth in its responses to public comments, does not believe that the comments received warrant changes to the proposed regulations (Exhibit 8).

**Recommendation**

**FGC staff:** Rely on two CEQA categorical exemptions (Class 6 and Class 7) for the proposed regulation changes and adopt the proposed regulation changes as recommended by DFW.

**DFW:** Adopt the proposed regulation changes as detailed in the ISOR.

**STAFF SUMMARY FOR OCTOBER 9-10, 2019****Exhibits**

1. Staff summary from Aug 7-8, 2019 FGC meeting (for background only)
2. ISOR
3. Economic and fiscal impact statement (Std. 399)
4. Proposed form DFW 1085, *Experimental Fishing Permit Terms and Conditions*
5. Box crab experimental gear permit terms and conditions, dated Dec 20, 2018 (for background only)
6. Draft notice of exemption
7. DFW memo transmitting ISOR and providing overview of CEQA categorical exemptions, received Jul 22, 2019
8. DFW memo responding to public comments, received Sep 25, 2019
9. DFW presentation

**Motion/Direction**

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission has determined, based on the record, that this approval is exempt from the California Environmental Quality Act pursuant to the guidelines in sections 15306 and 15307, Title 14, California Code of Regulations, and adopts the proposed regulations in Section 90 and Section 704, related to issuing experimental fishing permits.

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.

**Commissioners**  
**Eric Sklar**, President  
Saint Helena

**Jacque Hostler-Carmesin**, Vice President  
McKinleyville

**Russell E. Burns**, Member  
Napa

**Peter S. Silva**, Member  
Jamul

**Samantha Murray**, Member  
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STATE OF CALIFORNIA  
Gavin Newsom, Governor

## Fish and Game Commission



**Melissa Miller-Henson**  
**Executive Director**  
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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](mailto: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

## Amended Regulatory Language

Additions are indicated with double underlined text; deletions of original proposed language are indicated with ~~strikeout text~~ over underline.

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~~ department shall 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 on or before March 1 of each year, and if the fee is mailed, it must be postmarked prior to March 1.

(1) Exception: Prior to April 1, 2020, the fee shall be received by the department's license and revenue branch on or before March 31.

(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) The department may deny issuance or renewal, suspend or revoke an experimental fishing permit for reasons including:

(1) Failure to comply with the authorizations, conditions, or terms of the permit.

(2) A violation of Fish and Game Code or regulations adopted pursuant thereto 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.

(3) Reasons listed in Fish and Game Code section 1022(a)(2).

(4) A change in the laws or regulations that prohibits the continuation of the permitted fishing activity.

(d) A person whose experimental fishing permit is suspended or revoked by the department pursuant to this section may file a request for reinstatement, or an appeal in

the case of a denied experimental fishing permit, to the commission by submitting a written request for a hearing within 30 days of the department's action.

(e)(e) 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.

## Amended 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 08/01/201901/01/2020), 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.



**Experimental Fishing Permit No.** \_\_\_\_\_

**EXPERIMENTAL FISHING PERMIT TERMS AND CONDITIONS**

Pursuant to California Fish and Game Code (FGC) Section 1022 and Section 90, Title 14, California Code of Regulations (CCR), the Permitholder is authorized to conduct experimental fishing activities according to the authorizations, Standard Terms, Special Conditions and restrictions listed on the Experimental Fishing Permit (EFP) approved by the Fish and Game Commission (Commission) and issued by the California Department of Fish and Wildlife (Department). These Standard Terms shall apply to all persons or vessels conducting activities under an EFP.

Permittee Name: \_\_\_\_\_

Permittee Address: \_\_\_\_\_

Second Operator Name: \_\_\_\_\_

Second Operator Address: \_\_\_\_\_

Vessel Name and ID # \_\_\_\_\_

Description of Authorized Activity:

**STANDARD TERMS**

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).





## Special Conditions Approved By The Commission

Revision Date: \_\_\_\_\_

1. Participants may fish for box crab and rock crab, Dungeness crab or spot prawn within the same trip if appropriate permits for retained species are in place. Adherence to all other regulations regarding the take of these species is required. Brown box crab and lobster shall not be targeted or possessed within the same trip. For research purposes, the Department may provide written authorization for the landing of king crab caught in box crab traps above the 25-pound landing restriction specified in section 126 of Title 14. All other species caught in box crab traps shall be returned to the water immediately and not used as bait.
2. This permit authorizes up to 36,000 pounds of brown box crab to be landed annually by the vessel named in this permit. If this limit is reached prior to one year from the date fishing is initiated, all targeting of box crab must cease until the permit expires and is subsequently renewed.
3. All box crab must have a minimum width of 5  $\frac{3}{4}$  inches across the widest part of the carapace including spines to be retained, possessed and landed unless authorized in writing by the Department to retain smaller crab for research purposes.
4. No processing or packaging of box crab may take place until weighed, recorded on a landing receipt, and a landing receipt is provided to the permittee by the receiver.
5. Permittees must engage in a minimum of ~~50~~30 active fishing days per year targeting box crab. Active fishing days include days when box crab traps are pulled and do not include days when only transit or the setting of traps takes place.
6. Pursuant to FGC Section 9004, permittees must service their traps at intervals no more than 96 hours unless otherwise authorized in writing by the Department. Exceptions may be made for weather or other safety concerns.
7. Traps shall meet the following design specifications:
  - a. Traps may be any shape but must have a diameter, length or width no larger than 6 feet.
  - ~~b. Traps must have at least one round escape port no smaller than 4 inches in diameter.~~
  - ~~c. Traps made of wire mesh must have mesh measurements 1.5 x 3.5 inches or larger~~
  - ~~d. Escape ports must be in the top or side of the trap. If both are in the side, at least one must be located so that at least one half of the opening is in the upper half of the trap.~~
  - b. Traps must meet design specifications for either Dungeness crab (FGC 9011 (a)(2)) or Rock crab (FGC 9011 (b)(2)).
  - ec. Traps must include at least one destruct device to be specified by the Department pursuant to Section 180.2, Title 14, CCR.
  - fd. The Department may allow and/or request deployment of specific trap designs for research purposes.
8. Buoy markings shall comply with requirements specified in California Code of Regulations, Title 14, Section 180.5 marking the letter “R” on buoys used for box crab. ~~Additionally, the Department may require a tag of designated shape, color and size, to be provided by the permittee, to be fixed to the line immediately below the buoy.~~



9. Pop-up buoys shall not be used.
10. A maximum of 75 traps may be fished at one time unless additional traps are authorized in writing by the Department for research purposes.
11. If requested by the Department, permittees must move fishing gear in response to circumstances including, but not limited to, gear conflicts with other fishermen and Naval operations.
12. The permittee shall allow Department designated technicians to install electronic fishery monitoring hardware on their vessel and comply with all associated procedures for operation, maintenance, and data sharing. No fishing for box crab may take place unless a functioning electronic monitoring system is installed and used as specified by the Department. The electronic monitoring must remain active at all times when the vessel is in use through the duration of the project.
13. The permittee shall document all fishing activities using a logbook provided by the Department. Any additional information requested by the Department shall be provided by the permittee. Failure to keep or submit required records of fishing activity may result in revocation or suspension (including non- renewal) of the license or permit for the taking of all fish or the particular species for which the records are required.
- ~~14. The permittee shall ensure a landing receipt is submitted using E-Tix within 24 hours following a landing of box crab. Use of E-Tix is described in the California Code of Regulations, Title 14, Section 197.~~
- ~~15~~14. The permittee shall participate in all requested research data collection activities including but not limited to:
  - a. Intensive fishing within a designated area.
  - b. Trap survey monitoring catch per unit effort with varying levels of trap spacing along strings.
  - c. Tag-recapture study.
  - d. Crab collections.
  - e. Logbook data collection.
- ~~16~~15. The permittee must follow the best practices for avoiding whale entanglement described in the attached guide. This includes fishing gear and incident reporting requirements.
- ~~17~~16. The permittee and any person who assists the permittee, shall possess a valid general trap permit issued pursuant to FGC Section 9001, prior to engaging in any fishing operations authorized by this permit.
- ~~18~~17. Cooperation with domoic acid testing is required by providing samples to the California Department of Public Health when requested.

**Commissioners**  
**Eric Sklar**, President  
Saint Helena

**Jacque Hostler-Carmesin**, Vice President  
McKinleyville

**Russell E. Burns**, Member  
Napa

**Peter S. Silva**, Member  
Jamul

**Samantha Murray**, Member  
Del Mar

STATE OF CALIFORNIA  
Gavin Newsom, Governor

## Fish and Game Commission



**Melissa Miller-Henson**  
**Executive Director**  
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*Wildlife Heritage and Conservation*  
*Since 1870*

January 24, 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.

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

**This 15-day notice, dated January 24, 2020, supersedes the prior 15-day notice dated January 13, 2020. The prior notice contains unintentional formatting and grammatical errors in the proposed regulatory text, and should be disregarded. This current notice describes the proposed changes to the regulatory text, with corrections to the following errors:**

- **The amended regulatory text has been reformatted to clearly differentiate between the originally proposed regulatory text and the amended regulatory text that is presented as part of this 15-day notice;**
- **In subsection 90(c), the phrase “the department may” should read “the department shall”, to clarify the Department of Fish and Wildlife’s (Department) role in disciplinary measures concerning EFPs;**
- **Subsection 90(a)(4)(1) has been corrected to subsection 90(a)(4)(A).**

Thus, this 15-day notice dated January 24, 2020 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 double strikeout. Formerly proposed text that is not affected by the changes described in this 15-day notice is indicated in plain text with no underline or strikeout.

### **Changes to Section 90:**

- The regulatory text in subsection 90(a) has been changed to clarify that the 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 shall 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](mailto: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 24 through February 10, 2020.

Sincerely,



Craig Castleton

Associate Governmental Program Analyst

Attachments

## Amended Regulatory Language

Additions of newly proposed text are shown in double underline; ~~deletions of formerly proposed text~~ are shown in double strikeout. Formerly proposed text that is not affected by the changes described in the 15-day notice dated January 24, 2020 is indicated in plain text with no underline or strikeout.

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~~ department shall 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 on or before March 1 of each year, ~~and if the fee is mailed, it must be postmarked prior to March 1.~~

(A) Exception: Prior to April 1, 2020, the fee shall be received by the department's license and revenue branch on or before March 31.

(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) The department shall deny issuance or renewal, suspend or revoke an experimental fishing permit for reasons including:

(1) Failure to comply with the authorizations, conditions, or terms of the permit.

(2) A violation of Fish and Game Code or regulations adopted pursuant thereto 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.

(3) Reasons listed in Fish and Game Code section 1022(a)(2).

(4) A change in the laws or regulations that prohibits the continuation of the permitted fishing activity.

(d) A person whose experimental fishing permit is suspended or revoked by the department pursuant to this section may file a request for reinstatement, or an appeal in

the case of a denied experimental fishing permit, to the commission by submitting a written request for a hearing within 30 days of the department's action.

~~(e)~~(e) 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.

## Amended Regulatory Language

Section 704, Title 14, CCR is added to read:

### **Section 704. Experimental Fishing Permits; Fees and Forms**

<i>(a) Permits/Forms</i>	<i>Permit Fees (US\$)</i>
(1) Box Crab Experimental Fishing Permit	\$4,487.75
(2) Experimental Fishing Permit Terms and Conditions, DFW 1085 (New <del>08/01/2019</del> <u>01/01/2020</u> ), incorporated by reference herein.	

(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.



**Experimental Fishing Permit No.** \_\_\_\_\_

**EXPERIMENTAL FISHING PERMIT TERMS AND CONDITIONS**

Pursuant to California Fish and Game Code (FGC) Section 1022 and Section 90, Title 14, California Code of Regulations (CCR), the Permitholder is authorized to conduct experimental fishing activities according to the authorizations, Standard Terms, Special Conditions and restrictions listed on the Experimental Fishing Permit (EFP) approved by the Fish and Game Commission (Commission) and issued by the California Department of Fish and Wildlife (Department). These Standard Terms shall apply to all persons or vessels conducting activities under an EFP.

Permittee Name: \_\_\_\_\_

Permittee Address: \_\_\_\_\_

Second Operator Name: \_\_\_\_\_

Second Operator Address: \_\_\_\_\_

Vessel Name and ID # \_\_\_\_\_

Description of Authorized Activity:

**STANDARD TERMS**

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).







## Special Conditions Approved By The Commission

Revision Date: \_\_\_\_\_

1. Participants may fish for box crab and rock crab, Dungeness crab or spot prawn within the same trip if appropriate permits for retained species are in place. Adherence to all other regulations regarding the take of these species is required. Brown box crab and lobster shall not be targeted or possessed within the same trip. For research purposes, the Department may provide written authorization for the landing of king crab caught in box crab traps above the 25-pound landing restriction specified in section 126 of Title 14. All other species caught in box crab traps shall be returned to the water immediately and not used as bait.
2. This permit authorizes up to 36,000 pounds of brown box crab to be landed annually by the vessel named in this permit. If this limit is reached prior to one year from the date fishing is initiated, all targeting of box crab must cease until the permit expires and is subsequently renewed.
3. All box crab must have a minimum width of 5 ¾ inches across the widest part of the carapace including spines to be retained, possessed and landed unless authorized in writing by the Department to retain smaller crab for research purposes.
4. No processing or packaging of box crab may take place until weighed, recorded on a landing receipt, and a landing receipt is provided to the permittee by the receiver.
5. Permittees must engage in a minimum of ~~50-30~~ 30 active fishing days per year targeting box crab. Active fishing days include days when box crab traps are pulled and do not include days when only transit or the setting of traps takes place.
6. Pursuant to FGC Section 9004, permittees must service their traps at intervals no more than 96 hours unless otherwise authorized in writing by the Department. Exceptions may be made for weather or other safety concerns.
7. Traps shall meet the following design specifications:
  - a. Traps may be any shape but must have a diameter, length or width no larger than 6 feet.
  - ~~b. Traps must have at least one round escape port no smaller than 4 inches in diameter.~~
  - ~~c. Traps made of wire mesh must have mesh measurements 1.5 x 3.5 inches or larger~~
  - ~~d. Escape ports must be in the top or side of the trap. If both are in the side, at least one must be located so that at least one half of the opening is in the upper half of the trap.~~
  - b. Traps must meet design specifications for either Dungeness crab (FGC 9011 (a)(2)) or Rock crab (FGC 9011 (b)(2)).
  - ec. Traps must include at least one destruct device to be specified by the Department pursuant to Section 180.2, Title 14, CCR.
  - fd. The Department may allow and/or request deployment of specific trap designs for research purposes.
8. Buoy markings shall comply with requirements specified in California Code of Regulations, Title 14, Section 180.5 marking the letter “R” on buoys used for box crab. ~~Additionally, the Department may require a tag of designated shape, color and size, to be provided by the permittee, to be fixed to the line immediately below the buoy.~~



9. Pop-up buoys shall not be used.
10. A maximum of 75 traps may be fished at one time unless additional traps are authorized in writing by the Department for research purposes.
11. If requested by the Department, permittees must move fishing gear in response to circumstances including, but not limited to, gear conflicts with other fishermen and Naval operations.
12. The permittee shall allow Department designated technicians to install electronic fishery monitoring hardware on their vessel and comply with all associated procedures for operation, maintenance, and data sharing. No fishing for box crab may take place unless a functioning electronic monitoring system is installed and used as specified by the Department. The electronic monitoring must remain active at all times when the vessel is in use through the duration of the project.
13. The permittee shall document all fishing activities using a logbook provided by the Department. Any additional information requested by the Department shall be provided by the permittee. Failure to keep or submit required records of fishing activity may result in revocation or suspension (including non- renewal) of the license or permit for the taking of all fish or the particular species for which the records are required.
- ~~14. The permittee shall ensure a landing receipt is submitted using E-Tix within 24 hours following a landing of box crab. Use of E-Tix is described in the California Code of Regulations, Title 14, Section 197.~~
- ~~14~~14. The permittee shall participate in all requested research data collection activities including but not limited to:
  - a. Intensive fishing within a designated area.
  - b. Trap survey monitoring catch per unit effort with varying levels of trap spacing along strings.
  - c. Tag-recapture study.
  - d. Crab collections.
  - e. Logbook data collection.
- ~~15~~15. The permittee must follow the best practices for avoiding whale entanglement described in the attached guide. This includes fishing gear and incident reporting requirements.
- ~~17~~16. The permittee and any person who assists the permittee, shall possess a valid general trap permit issued pursuant to FGC Section 9001, prior to engaging in any fishing operations authorized by this permit.
- ~~18~~17. Cooperation with domoic acid testing is required by providing samples to the California Department of Public Health when requested.

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**From:** Christopher Miller [REDACTED]  
**Sent:** Wednesday, January 29, 2020 10:04 AM  
**To:** FGC  
**Cc:** Mason, Tom@Wildlife; Mastrup, Sonke@Wildlife; Coates, Julia@Wildlife; Som, Marina@Wildlife; Ashcraft, Susan@FGC; Mireles, Carlos@Wildlife  
**Subject:** Re: Notice of continuation: Experimental Fishing Permit Program (Phase I)

Dear Commissioners ,

I am writing you based on my experience attending the recent experimental permit program to implement the California Fisheries Innovation act of 2018.

I attended at Los Alamitos it was linked to Monterey, Sacramento and Eureka CFW offices via a webinar .

It was also integrated with National Marine Fisheries Service expertise in the NOAA fisheries experimental fisheries program. I was there as a volunteer independent social geographer for the Santa Barbara Trappers.

We are looking for opportunity to get pro-active in working with the state managers to adapt to climate change.

As a fishery organizer I was there to add my experience as veteran fisherman that has experience in compensation fishing. Commonly known in the fishing culture as fishing for data. We worked with our Marine Sanctuary Program to develop a pilot program for ecosystem based management by lobbying for Sanctuary Advisory Council to develop community based management in our MPA network at the Santa Barbara Channel Islands. In the highest form of compensation fishing our ports fishing for data in the Sea Urchin Fishery leveraged a major science program to address Ocean Acidification out of our commitment to community based management grass roots volunteer network.

I am currently fishing lobster at Santa Cruz Island out of Santa Barbara Port and I am writing you in between fishing trips. Networking among the fishermen in our trap fisheries we are very concerned about a pro-active strategy to deal with the problem of whale protection and how it is integrated with our state and federal MPA's

I would like to recommend to the F&GC and the Ocean Protection Council that we develop the oceanographic modeling of the California Current Ecosystem to allow us to prevent significant problems in our regions trap fisheries interaction with whales.

We have witnessed in the Dungeness Crab fishery the recent heroic efforts of collaborations to develop new tools to plan harvest and protect whales. Their experience with design of the science for fisheries is at very high cost that is really hard won. If you identify with the growing concept of moving from harvest control to harvest planning.

The hot shot team of volunteers are the vanguard as form of what is a new program for compensation fishing to engineer a whole fishery for conservation and biodiversity protection. Lets organize it as a social business plan to explore how we replicate it in the other fisheries.

We now have a study that is recently published by a team of NOAA fisheries scientists that documents the work. Lead author is Jarrod Santora ecosystem oceanographer with NOAA Fisheries and UC Santa Cruz. We also have a fisheries spokesman that is testimony to the social value of this projects John Mellor 40 year veteran fisherman out of the port of San Francisco .

We also have an appraisal from Ocean Protection Council staff Paige Berube about the product as a framework for protecting marine mammals with fishing ports. This is the straight ahead way for core values of the states strategic vision.

As the leading edge of the fisheries innovation at this time. We can apply it to the California Spiny Lobster fishery as a framework also that will follow the ecological connectivity of our fisheries. It will be a quantum leap forward for us developing our coming review of the California Spiny Lobster fishery in our Fishery Management Plan process. This new oceanographic framework has a real time application for the fishery goal of scientific diplomacy across the California range of the Spiny lobster management . Our lobster stock is roughly 17% of the geographic range of the fishery, 83% is in Baja California utilizing a collaborative science program that has maintained an international Marine Stewardship Council (MSC) certification for sustainability.

If you look at the current level of fishing effort on the boundary of our MPA's you will see that this is now a very large scale potential scientific transect for evaluation of CPUE in our lobster fishery. It also is a very clear potential for whale tangling in lobster gear.

In our model system as lobster fishermen we were pro-active took our fishery out of the state legislature as a grass roots movement to adapt it with limited under the commission process.

Then under the commission we were proactive in MPA design to generate bio diversity protection using MPA's as tools in ecosystem based management

We also were proactive in generating collaboration in MPA monitoring that formed the basis of a our FMP's spawning potential ratio modeling of MPA's and harvest rates across the harvest grounds.

This was followed by our pro-active request to generate our FMP for a MSC certification that would provide the foundation for a quid pro-quo in MPA design suggested as a policy of the F&GC when we started. That we would insure the next generation of fishermen had equity in their fishery.

In summary please direct the CFW to prioritize the EFP programs development as a design process using the recent NOAA fisheries report to generate a political economy that we can call a social business plan for harvest that creates straight forward application for our trap fisheries in the California Bight.

I am sure based on my personal experience that this request is really a formality they are already well on their way to working out this process. It has been a really great experience to see the CFW become more resilient and dynamic in action.

But please help us to organize our fellow fishermen so we can use the oceanographic community model to protect whales for next lobster season.

The density of traps on the lines now indicates we are over capitalized and need to reduce traps in a way to optimize our yield. This is where we have some synergy going with the new CFW electronic GPS log program which we need to support with restoring our grass roots activist movement for pro-active fisheries design in the fishing ports.

Our pro-active work created a lobster boom market in China that attracted investment as other fisheries went into stock rebuilding we now can use the new EFP program to generate a more diverse and resilient multi species limited entry program that is our native form of applied fisheries ecology.

We fishermen have to protect our small scale fisheries with community development that creates harmony and respect for collaboration.

Thank you  
Chris Miller  
Santa Barbara Trappers