

**State of California
Office of Administrative Law**

In re:
Fish and Game Commission

Regulatory Action:

Title 14, California Code of Regulations

Adopt sections: 90, 704

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

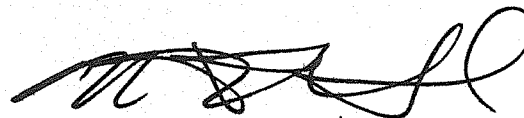
OAL Matter Number: 2020-0227-02

OAL Matter Type: Regular Resubmittal (SR)

In this resubmitted rulemaking action, the Fish and Game Commission adopts the regulations to establish the Experimental Fishing Permit Program set forth by Assembly Bill 1573 (Stats. 2018, Ch. 477), which repealed Fish and Game Code section 8606 and adopts Fish and Game section 1022.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 3/24/2020.

Date: March 24, 2020



**Thanh Huynh
Senior Attorney**

**For: Kenneth J. Pogue
Director**

**Original: Melissa Miller-Henson,
Executive Director**

Copy: Craig Castleton

RESUBMITTAL

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2019-0813-01	REGULATORY ACTION NUMBER 2020-0227-02	EMERGENCY NUMBER SR 2020 FEB 27 A 8:53
------------------	---	---	--

For use by Office of Administrative Law (OAL) only	
NOTICE	REGULATIONS

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

MAR 24 2020

1:56 p.m.

OFFICE OF ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY California Fish and Game Commission	AGENCY FILE NUMBER (If any)
--	-----------------------------

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Experimental Fishing Permit Program (Phase 1)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2019-1016-02S
--	--

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 90, 704
TITLE(S) 14	AMEND
	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
January 24, 2020 - February 10, 2020 ; January 13, 2020 - January 28, 2020 per agency request (TH) 3/24/2020

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY		
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Craig Castleton	TELEPHONE NUMBER (916) 651-1329	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) craig.castleton@fgc.ca.gov
---	---	-----------------------	--

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>David Thesell</i>	DATE 2/25/20
TYPED NAME AND TITLE OF SIGNATORY David Thesell, Program Manager	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 24 2020

Office of Administrative Law

Approved 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 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.
 - (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 on or before March 1 of each year.
 - (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 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) 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.

Approved 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 01/01/2020), 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).



State of California – Department of Fish and Wildlife
EXPERIMENTAL FISHING PERMIT TERMS AND CONDITIONS
DFW 1085 (NEW 01/01/2020)

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.
 - c. The permittee shall provide Department staff with 24 hours notice prior to every fishing trip. A phone number will be provided by Department staff for this purpose at the time of issuance of the permit.

SPECIAL CONDITIONS

Special Conditions for Experimental Fishing Permits may be attached to this permit for research and the conservation and management of marine resources and the environment, as set forth in subsection 90(b)(2)(A), Title 14, CCR.

Based upon a recommendation from the Department, the Commission may adopt, amend, or repeal Special Conditions as it deems necessary for research and the conservation and management of marine resources and the environment, as set forth in subsection 90(b)(2)(A), Title 14, CCR.

The permit is not valid until the permittee has certified by their signature below that they have read and understand the Standard Terms and Special Conditions of the permit; paid the fee per Section 704; received a Permit Number; and has returned one signed copy to the Department.

I (we) have read, understand and agree to abide by all Standard Terms and Special Conditions of this permit.

Permittee Signature Date

Second Operator Signature (if applicable) Date

Received by LRB Fee \$ _____ Experimental Fishing Permit No. _____

By: LRB Date



Special Conditions Approved By The Commission

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 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 meet design specifications for either Dungeness crab (FGC 9011 (a)(2)) or Rock crab (FGC 9011 (b)(2)).
 - c. Traps must include at least one destruct device pursuant to Section 180.2, Title 14, CCR.
 - d. 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.
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.



State of California – Department of Fish and Wildlife
EXPERIMENTAL FISHING PERMIT TERMS AND CONDITIONS
DFW 1085 (NEW 01/01/2020)

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 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. The permittee must follow the best practices for avoiding whale entanglement described in the attached guide. This includes fishing gear and incident reporting requirements.
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.
17. Cooperation with domoic acid testing is required by providing samples to the California Department of Public Health when requested.