

could result from the originally proposed regulatory action. The changes will benefit the adopted regulations by adding clarity to their purpose and improving their enforceability.

First 15-day Continuation Notice

A 15-day continuation notice was published on the Commission's website www.fgc.ca.gov on January 13, 2020, and notice was mailed to interested and affected parties. This notice contained unintentional formatting and grammatical errors in the proposed regulatory text, and was superseded by the second 15-day continuation notice described below.

Second 15-day Continuation Notice

A second 15-day continuation notice was published on the Commission's website on January 24, 2020, which superseded the prior 15-day notice dated January 13, 2020. The second notice was mailed to interested and affected parties, and described the proposed changes to the regulatory text with corrections to the following errors:

- The amended regulatory text was reformatted to clearly differentiate between the originally proposed regulatory text and the amended regulatory text that was presented as part of the 15-day notice.
- In subsection 90(c), the phrase "the department may" should read "the department shall", to clarify the Department's role in disciplinary measures concerning EFPs.
- Subsection 90(a)(4)(1) was corrected to subsection 90(a)(4)(A), per the formatting conventions used in Title 14, CCR to denote subsections.

The second continuation notice also described the sufficiently related changes to the originally proposed regulatory text in Sections 90 and 704, and form DFW 1085:

Changes to Section 90:

- The regulatory text in subsection 90(a) was 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) was 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 was 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) was 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 subsection 90(c) was added to 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.

- New subsection 90(d) was added to clarify 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, was changed to reflect the revisions made to the proposed form. This change will enable the regulated public to visibly differentiate between the former (New 08/01/2019) and changed form DFW 1085 (New 01/01/2020).
- The Revision Date field on form DFW 1085 was removed, as the form header already contains a field for the version date that is sufficient for version tracking purposes.
- Standard Term 7 was 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 was 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 was 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 were 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 was 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 was 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 were made to the proposed regulatory text in Sections 90 and 704, and form DFW 1085. These changes align with the formatting conventions used in Title 14, CCR, and enable the regulated public to read and understand the regulatory text.

At its March 23, 2020 teleconference, the Commission considered and adopted the regulations as proposed for Phase 1 of the Experimental Fishing Permit (EFP) Program implementation, establishing new Chapter 5.6, Experimental Fishing Permit Program, in Title 14, California Code of Regulations (CCR). New Chapter 5.6 contains Section 90, Issuance of Experimental Fishing Permits, providing a process for issuing EFPs for the continuation of the experimental box crab research program approved by the Commission in December 2018. New Section 704, Experimental Fishing Permits; Fees and Forms, was also adopted relating to fees and form DFW 1085 (New 08/01/2019) Experimental Fishing Permit Terms and Conditions, incorporated by reference in Section 704, associated with issuance of EFPs.

As part of this adoption, the Commission adopted the regulations in Sections 90 and 704, and form DFW 1085, incorporated by reference in Section 704, as originally noticed and the sufficiently-related changes to the originally-noticed and adopted regulations as outlined in two 15-day notices distributed to the public on January 13, 2020 and January 24, 2020.

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

VII. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations

First 15-day Continuation Notice

The public comment period for the first 15-day continuation notice, published on January 13, 2020, was from January 13 through January 28, 2020. No comments were received during the initial 15-day comment period, and this first notice was superseded by the second 15-day continuation notice published on January 24, 2020.

Second 15-day Continuation Notice

The public comment period for the second 15-day continuation notice, published on January 24, 2020, was from January 24 through February 10, 2020.

The Commission received one comment from the public during the second 15-day comment period, which is summarized and responded to below.

Christopher Miller, fishery organizer, email dated January 29, 2020:

Writing in response to a stakeholder engagement meeting held by the Department and Commission, in collaboration with The Nature Conservancy, on January 14, 2020 to discuss proposals for the EFP (Phase II) rulemaking, Mr. Miller recommended, in the design of the EFP Program, developing an oceanographic model of the California Current Ecosystem to address trap fisheries interaction with whales. Additionally, Mr. Miller recommended that the Department should look to recent innovations in the Dungeness crab fishery through collaborative work by fishermen and National Oceanic and Atmospheric Administration (NOAA) scientists as a social business plan for application in other fisheries.

Department's response:

No action taken. This comment pertains to Phase II of the EFP Program and is thus outside the scope of the proposed regulations. As a result, the Department does not find that changes to the proposed regulations are warranted considering the public comment received.

March 23, 2020 Teleconference

No additional public comments were received at the Commission's March 23, 2020 teleconference. At this meeting, the Commission concurred with the Department's response to the public comment received under the two 15-day notices, and adopted the proposed regulations in Sections 90 and 704, and form DFW 1085, incorporated by reference in Section 704, as originally noticed and the sufficiently-related changes to the originally-noticed and adopted regulations as outlined in two 15-day notices distributed to the public on January 13, 2020 and January 24, 2020.

VIII. Location and Index of Rulemaking File

A rulemaking file with attached file index is maintained at:

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

IX. Location of Department Files

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

X. Incorporation by Reference

The Commission incorporated by reference form DFW 1085, Experimental Fishing Permit Terms and Conditions, into Section 704, as it would be cumbersome, unduly expensive and otherwise impractical to publish the form in the California Code of Regulations.

Form DFW 1085 was made available to the public both on the Commission's website www.fgc.ca.gov, and at publicly accessible locations at the Commission's and Department's offices within the California Natural Resources Building in Sacramento, California (noted in Sections VIII and IX of this Supplemental Final Statement of Reasons).

Updated 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.

UPDATE

At its October 10, 2019 meeting, the California Fish and Game Commission (Commission) adopted the regulations as proposed for Phase 1 of the Experimental Fishing Permit (EFP) Program implementation, establishing new Chapter 5.6, Experimental Fishing Permit Program, in Title 14, California Code of Regulations (CCR). New Chapter 5.6 contains Section 90, Issuance of Experimental Fishing Permits, providing a process for issuing EFPs for the continuation of the experimental box crab research program approved by the Commission in December 2018. New Section 704, Experimental Fishing Permits; Fees and Forms, was also adopted relating to fees and form DFW 1085 (New 08/01/2019) Experimental Fishing Permit Terms and Conditions, incorporated by reference in Section 704, associated with issuance of EFPs.

UPDATE: 15-DAY NOTICE AND COMMISSION ADOPTION

Subsequent to the October 10, 2019 adoption by the Commission, the Department determined that minor changes to the adopted regulatory text were needed to add clarity. These changes were sufficiently related to the originally proposed regulatory text such that the public was provided adequate notice that the change could result from the originally proposed regulatory

action. The changes will benefit the adopted regulations by adding clarity to their purpose and improving their enforceability.

A 15-day continuation notice describing the proposed changes was published on the Commission's website www.fgc.ca.gov on January 13, 2020, and notice was mailed to interested and affected parties. This notice contained unintentional formatting and grammatical errors in the proposed regulatory text, and was superseded by the second 15-day continuation notice published on January 24, 2020.

A second 15-day continuation notice was published on the Commission's website on January 24, 2020, and notice was mailed to interested and affected parties. The second notice superseded the prior 15-day notice dated January 13, 2020. The second notice corrected minor formatting and grammatical errors and the proposed sufficiently related changes to the regulatory text were re-published.

At its March 23, 2020 teleconference, the Commission considered and adopted the regulations as proposed for Phase 1 of the Experimental Fishing Permit (EFP) Program implementation, establishing new Chapter 5.6, Experimental Fishing Permit Program, in Title 14, California Code of Regulations (CCR). New Chapter 5.6 contains Section 90, Issuance of Experimental Fishing Permits, providing a process for issuing EFPs for the continuation of the experimental box crab research program approved by the Commission in December 2018. New Section 704, Experimental Fishing Permits; Fees and Forms, was also adopted relating to fees and form DFW 1085 (New 08/01/2019) Experimental Fishing Permit Terms and Conditions, incorporated by reference in Section 704, associated with issuance of EFPs.

As part of this adoption, the Commission adopted the regulations in Sections 90 and 704, and form DFW 1085, incorporated by reference in Section 704, as originally noticed and the sufficiently-related changes to the originally-noticed and adopted regulations as outlined in two 15-day notices distributed to the public on January 13, 2020 and January 24, 2020.

The Commission incorporated by reference form DFW 1085, Experimental Fishing Permit Terms and Conditions, into Section 704, as it would be cumbersome, unduly expensive and otherwise impractical to publish the form in the California Code of Regulations.

Form DFW 1085 was made available to the public both on the Commission's website www.fgc.ca.gov, and at publicly accessible locations at the Commission's and Department's offices within the California Natural Resources Building in Sacramento, California.

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