



- Chris and Dominique Miller, email received July 25, 2019
- Kate Kauer, The Nature Conservancy, oral testimony at August 8, 2019 Commission meeting.

The Commission concurs with the Department's recommended response to the comments addressed in the pre-adoption memo.

Public comments received after September 23, 2019 are summarized and responded to below.

- (1) Christopher Voss, commercial fisherman of Santa Barbara, oral testimony received at the October 10, 2019 Commission meeting:
  - a. As a current participant in the experimental box crab research program, the commenter expressed concern that in transitioning from the Experimental Gear Permit (EGP) to EFP, the implications it has on restricted access policy in general need to be carefully considered because fishermen are engaging in experiments that would result in fishing opportunity, and how that opportunity is allocated is critical. Additionally, the commenter pointed to the Commission's policy of allocating future fishing opportunity based on past fishing history and suggested the Commission consider this policy when determining who can participate in these fishing activities.
  - b. The commenter noted that, in the case of the box crab EGP, it is important to acknowledge those fishermen who had demonstrated the potential for a box crab fishery and brought it to the attention of the Department; they were not given priority in the drawing for the box crab permit.

Response:

- a. The approval and issuance of EFPs are means by which the Commission and Department can facilitate the testing and assessment of alternative fishing methods or gear types and the feasibility of additional fishing opportunities that would otherwise be restricted by existing fishing regulations. Since all activities conducted under the EFP are experimental and exploratory in nature, there is no guarantee of fishing opportunities following the completion of the experimental period. If a future box crab fishery is developed, the Department would keep all options open about how and who may receive future fishery permits (thus not excluding or including anyone at this time). Any future restricted access program would be developed pursuant to the Commission's policy on restricted access commercial fisheries which considers eligibility based on the level of historical participation and other qualifying criteria.
- b. As there were more applicants than permits available, the Department

determined the most equitable way to assign an order for consideration for the eight box crab EGPs approved by the Commission in December 2018 was through a public drawing of all applicants determined by the Department to meet the terms and conditions of the EGP. As stated in the proposed regulatory text for this EFP (Phase 1) rulemaking, EFPs will be first issued by the Department to those applicants who received an EGP in 2018 and who have submitted a request for permit issuance pursuant to the proposed regulations. Whenever there are less than eight valid permits issued, the Department may issue EFPs to another applicant approved by the Commission in 2018 for an EGP, so long as there are no more than eight valid permits at any one time. If a future box crab fishery is developed, access to or preferential treatment regarding future permits of any type is not implied by participation in the EGP or EFP program.

In conclusion, the Department does not find that changes to the proposed regulations are warranted considering the public comments received.

At its October 10, 2019 meeting, the Commission concurred with the Department's response to public comments received, and adopted the proposed regulations in Chapter 5.6, containing Section 90, and Section 704, Title 14, CCR as originally proposed in the Notice of Proposed Action.

VII. 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

VIII. Location of Department Files:

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

IX. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulatory Action: 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.

- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

X. 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 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 of the **Initial Statement of Reasons dated July 22, 2019**. 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 of the **Initial Statement of Reasons dated July 22, 2019**). 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.

## **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.**

**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.**