

STAFF SUMMARY FOR APRIL 14, 2021

22A. COMMISSION ADMINISTRATIVE ITEMS – RULEMAKING TIMETABLE UPDATES**Today's Item****Information** ☐**Action** ☒

Review and potentially approve changes to the perpetual timetable for anticipated regulatory actions.

Summary of Previous/Future Actions

- FGC approved rulemaking timetable Feb 10, 2021; Webinar/Teleconference
- **Today consider approving changes to the rulemaking timetable Apr 14, 2021; Webinar/Teleconference**

Background

This is a standing agenda item for FGC staff and DFW to request changes to the FGC regulatory timetable, or for FGC to make changes during the course of this meeting.

DFW requests three changes to FGC's regulatory timetable (exhibits 1 and 2):

- Move from "TBD" to schedule the rulemaking to add Section 91, amend sections 90, 120.1, 149, 180 and 704, and repeal Section 149.3 concerning experimental fishing permits (EFPs). The rulemaking is Phase II of the process to establish an EFP Program pursuant to Assembly Bill 1573, also known as the California Fisheries Innovation Act of 2018.

The EFP Phase II rulemaking was delayed due to DFW and FGC regulatory staffing constraints, but is a joint priority to advance in 2021. As a result, DFW requests that the proposed rulemaking be scheduled for a notice hearing at the Jun 2021 FGC meeting, discussion at the Aug 2021 meeting, and adoption at the Oct 2021 meeting.

- Add under TBD, two 90-day extensions of the emergency regulations in sections 29.20 and 29.80 relating to recreational clam, sand crab, and shrimp gear. The current emergency regulations adopted by FGC in Feb 2021 limit the types of gear permitted to be used to harvest clams, specifically prohibit the use of hydraulic hand pumps, and include gear restriction language for hydraulic pumps and any other method that can liquefy sand in any area where clams may be taken.

The emergency regulations are set to expire on Jan 8, 2022, which staff has noted in the regulatory timetable. Note that while the first and second 90-day extensions are shown in the regulatory timetable (Exhibit 1) under TBD, FGC and DFW staff will determine the most appropriate schedule for these two extensions, at which time staff will recommend scheduling on the timetable. The 90-day extensions are necessary to keep the prohibition in place while a standard rulemaking (certificate of compliance) is promulgated.

- Schedule a standard rulemaking (certificate of compliance) to amend sections 29.20 and 29.80 relating to recreational clam, sand crab, and shrimp gear. DFW requests that the proposed rulemaking be scheduled for a notice hearing at the Aug 2021 FGC meeting, discussion at the Oct 2021 meeting, and adoption at the Dec 2021 meeting.

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FGC staff recommends one additional change to the regulatory timetable (Exhibit 1):

- Update the title of the proposed amendment to Section 632 that intends to allow for maintenance of artificial structures within marine protected areas (MPAs) that were installed prior to MPA designation by FGC. The updated title, *Pre-Existing Structures in Marine Protected Areas (MPAs), Marine Managed Areas (MMAs), and Special Closures*, will clarify the narrow focus and intent of the proposed rulemaking.

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

FGC staff: Adopt proposed changes to the timetable for anticipated regulatory actions (Exhibit 2), and any rulemaking changes identified during this meeting.

Exhibits

1. [DFW memo, received Apr 7, 2021](#)
2. [Perpetual Timetable for Anticipated Regulatory Actions, dated Apr 7, 2021](#)

Motion

Moved by _____ and seconded by _____ that the Commission approves the proposed changes to the rulemaking timetable as discussed today.

Memorandum

Date: April 5, 2021

Received April 7, 2021

Original on file

To: Melissa Miller-Henson
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director

Subject: **Request for Changes to the Fish and Game Commission's Timetable for Anticipated Regulatory Actions**

The Department of Fish and Wildlife (Department) requests the following schedule changes to the Fish and Game Commission's (Commission's) 2021 regulatory timetable:

- Move from TDB and schedule the rulemaking to add Section 91, and amend Sections 90 and 704, to establish the Experimental Fishing Permit (EFP) Program pursuant to Assembly Bill (AB) 1573, also known as the California Fisheries Innovation Act of 2018. This regulatory proposal will also amend current regulations in subsections 120.1, 149, and 180, and repeal Section 149.3, to reflect changes to the Fish and Game Code (FGC) pertaining to experimental fishing activity. The rulemaking is Phase II of EFP Program Implementation. Effective in March 2020, EFP Phase I allowed existing box crab EGPs to transition to EFPs without regulatory disruption to the existing research while the Department builds out the EFP Program. This rulemaking was delayed due to Department and Commission regulatory staffing constraints, but has been determined to be a joint priority to advance this year.
 - The proposed meeting schedule is notice at the June meeting, discussion at the August meeting, and adoption at the October meeting.
- Schedule readoption of the emergency regulations for Recreational Clam, Sand Crab, and Shrimp Gear in Sections 29.20 and 29.80, Title 14, CCR for 180 days. The emergency regulation amended subsections 29.20(c) and (d), Title 14, CCR to limit the gear permitted to be used to harvest clams to hand operated spades, shovels, hoes, forks, rakes, slurp guns, clam guns, and rigid clam tubes, and specifically prohibit the use of hydraulic hand pumps. Subsection 29.20(c) was revised to include gear restriction language for the hydraulic pump, as well as language that states that it is unlawful to possess a hydraulic pump or use any method that can liquefy sand in any area where clams may be taken. The extension is necessary to keep the prohibition in place while a standard rulemaking is promulgated.

Melissa Miller-Henson, Executive Director
Fish and Game Commission
April 5, 2021
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- Add a standard rulemaking (Certificate of Compliance) for the above-described amendments in sections 29.20 and 29.80, Title 14, CCR regarding Recreational Clam, Sand Crab, and Shrimp Gear.
 - The proposed meeting schedule is notice at the August meeting, discussion at the Oct meeting, and adoption at the December meeting.

If you have any questions or need additional information, please contact Regulations Unit Manager, Michelle Selmon at (916) 704-3215 or by email at Michelle.Selmon@wildlife.ca.gov.

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California Fish and Game Commission: Perpetual Timetable for Anticipated Regulatory Actions

Updated April 8, 2021

Items proposed for change are shown in blue underlined or strikeout font

Regulatory Change Category	Title 14 Section(s)	TC Webinar/Teleconference Apr 13, 2021	FGC Webinar/Teleconference Apr 14, 2021	FGC Webinar/Teleconference May 11, 2021	WRC Webinar/Teleconference May 11, 2021	FGC Webinar/Teleconference Jun 16, 2021	FGC Webinar/Teleconference Jun 17, 2021	MRC Webinar/Teleconference Jul 20, 2021	TC Webinar/Teleconference Aug 17, 2021	FGC Webinar/Teleconference Aug 18, 2021	FGC Webinar/Teleconference Aug 19, 2021	WRC Webinar/Teleconference Sep 16, 2021	FGC Webinar/Teleconference Oct 13, 2021	FGC Webinar/Teleconference Oct 14, 2021	MRC Webinar/Teleconference Nov 9, 2021	TC Webinar/Teleconference Dec 14, 2021	FGC Webinar/Teleconference Dec 15, 2021	FGC Webinar/Teleconference Dec 16, 2021	WRC Jan 2022 TBD	FGC Feb 2022 TBD	FGC Feb 2022 TBD	MRC Mar 2022 TBD	FGC Apr 2022 TBD	FGC May 2022 TBD
Recreational Clam, Sand Crab, and Shrimp Gear Emergency ⁶	29.20, 29.80																	EE-12/9/4	EE 1/8					
<u>Recreational Clam, Sand Crab, and Shrimp Gear (Implementing Certificate of Compliance)</u> ⁶	<u>29.20, 29.80</u>									N	D							A	E 1/1					
Central Valley Sport Fishing (Annual)	7.40(b)(4), (43), (66), (80)		D	A				E 7/16									N							
Klamath River Basin Sport Fishing (Annual)	7.40(b)(50)		D	A					E 8/15								N							
Waterfowl (Annual)	502		A					E 7/1									N							
Western Joshua Tree Renewable Energy 2084 EM	749.10	EE 4/28/21 without Governor's Executive Order							EE 8/27/21 with Governor's Executive Order															
Western Joshua Tree Renewable Energy 2084 EM Extension ¹	749.10									EM 8/27/21				EE 11/24/21										
Western Joshua Tree Renewable Energy 2084 EM Extension ²	749.10											EM 11/24/21												
Western Joshua Tree Dead Hazard Trees 2084	749.11													EE 11/9/21										
Recreational Take of Red Abalone	29.15		E 4/1																					
Recreational take of Sea Urchin at Caspar Cove and Tanker Reef ⁵	29.06	E 4/1																						
Recreational Purple Sea Urchin emergency (120 + 90 day extensions)	29.06								EE 8/2															
<u>Experimental Fishing Permit (EFP) Program Phase II</u>	<u>90.91, 120.1, 149, 149.3, 180, 704</u>						N			D	A							E 1/1						

Rulemaking Schedule to be Determined	Title 14 Section(s)	TC Webinar/Teleconference Apr 13, 2021	FGC Webinar/Teleconference Apr 14, 2021	FGC Webinar/Teleconference May 11, 2021	WRC Webinar/Teleconference May 11, 2021	FGC Webinar/Teleconference Jun 16, 2021	FGC Webinar/Teleconference Jun 17, 2021	MRC Webinar/Teleconference Jul 20, 2021	TC Webinar/Teleconference Aug 17, 2021	FGC Webinar/Teleconference Aug 18, 2021	FGC Webinar/Teleconference Aug 19, 2021	WRC Webinar/Teleconference Sep 16, 2021	FGC Webinar/Teleconference Oct 13, 2021	FGC Webinar/Teleconference Oct 14, 2021	MRC Webinar/Teleconference Nov 9, 2021	TC Webinar/Teleconference Dec 14, 2021	FGC Webinar/Teleconference Dec 15, 2021	FGC Webinar/Teleconference Dec 16, 2021	WRC Jan 2022 TBD	FGC Feb 2022 TBD	FGC Feb 2022 TBD	MRC Mar 2022 TBD	FGC Apr 2022 TBD	FGC May 2022 TBD
<u>Recreational Clam, Sand Crab, and Shrimp Gear Emergency (First 90-day Extension)</u> ⁶	<u>29.20, 29.80</u>																							
<u>Recreational Clam, Sand Crab, and Shrimp Gear Emergency (Second 90-day Extension)</u> ⁶	<u>29.20, 29.80</u>																							
<u>Pre-Existing Structures in</u> Marine Protected Areas (MPAs), Marine Managed Areas (MMAs), and Special Closures	632																							
CA Grunion (FGC Petition #2019-014)	TBD																							
Commercial Kelp and Algae Harvest Management	165, 165.5, 705																							
Santa Cruz Harbor Salmon Fishing (FGC Petition #2016-018)	TBD																							
European Green Crab (FGC Petition #2017-006)	TBD																							
Wildlife Areas/Public Lands ⁴	TBD																							
<u>Experimental Fishing Permit (EFP) Program Phase II</u>	<u>TBD</u>																							
Possess Game / Process Into Food	TBD																							
American Zoological Association / Zoo and Aquarium Association	671.1																							
Night Hunting in Gray Wolf Range (FGC Petition #2015-010)	474																							
Shellfish Aquaculture Best Management Practices	TBD																							
Ban of Neonicotinoid Pesticides on Department Lands (FGC Petition #2017-008)	TBD																							
Commercial Pink Shrimp Trawl	120, 120.1, 120.2																							
Ridgeback Prawn Incidental Take Allowance	120(e)																							

KEY

FGC = California Fish and Game Commission MRC = FGC Marine Resources Committee WRC = FGC Wildlife Resources Committee TC = FGC Tribal Committee

EM = Emergency EE = Emergency Expires E = Anticipated Effective Date (RED "X" = expedited OAL review)

N = Notice Hearing D = Discussion Hearing A = Adoption Hearing V = Vetting R = Committee Recommendation

3 = Includes FGC Petition #2018-008 4 = Includes FGC Petition #2018-003 5 = Includes FGC Petition #2020-001 6 = Includes FGC Petition #2019-012