

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 205, 713, 1022, 1050, 7071, 7078, 7701, 7708, 8026, 8425, 8429.5, 8491, 8500, 8591, 8841 and 8842 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205, 713, 1022, 1050, 7070, 7071, 7075, 7078, 7083, 7700, 7701, 7702, 7702.1, 7703, 7704, 7705, 7706, 7707, 7708, 7709, 7710.1, 7710.5, 8026, 8425, 8429.5, 8429.7, 8490, 8491, 8500, 8591, 8841, 8842, 9000, 9000.5, 9001, 9001.6, 9001.7, 9001.8, 9002, 9002.5, 9003, 9004, 9005, 9006, 9007, 9008, 9010, 9011, 9015, 12159 and 12160 of said Code, proposes to amend sections 90, 120.1, 149, 180 and 704, add Section 91 and repeal Section 149.3, Title 14, California Code of Regulations (CCR), relating to implementation of Experimental Fishing Permit (EFP) Program (Phase II) and repeal of nonoperational experimental market squid vessel permits.

Informative Digest/Policy Statement Overview

Unless otherwise specified, all section references in this document are to Title 14, CCR.

The California Department of Fish and Wildlife (Department) is recommending that Commission add new Section 91, which will establish a state Experimental Fishing Permit (EFP) Program for marine fisheries. This regulatory proposal will also amend current regulations in sections 90, 120.1, 180, and 704 for consistency with recent changes in the Fish and Game Code (FGC) pertaining experimental marine fishing activities and amend Section 149 and repeal Section 149.3 to remove nonoperational experimental market squid vessel permit provisions to harmonize the regulations associated with experimental fishing activities and avoid confusion with the use of the term “experimental” in reference to other permits outside the scope of the EFP Program.

The proposed regulations will implement 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 This legislative action repealed the experimental gear permit (EGP) provisions in FGC Section 8606 and added new FGC Section 1022, providing for an EFP program to facilitate fishery-related exploration and experimentation to inform state management of commercial and recreational fisheries.

Under current regulations (Section 90), EFPs may be issued only to those applicants previously approved by the Commission in 2018 to receive an experimental gear permit to participate in a collaborative research program evaluating the potential of a brown box crab fishery in California (box crab program). Section 90 regulations (EFP Program Phase I) implement, in part, AB 1573, ensuring that the current experimental box crab fishery research program can continue while a larger programmatic rulemaking (EFP Program Phase II) can be developed to build out an EFP program pursuant to FGC Section 1022. Requests for new EFPs cannot be accommodated until EFP Program Phase II regulations (this rulemaking) are in place.

The proposed regulations will add new Section 91, “Marine Fisheries: Experimental Fishing Permit Program,” which will establish the procedures for application submittal, Department review, public notice and comment, Commission approval, and Department issuance and administration of new EFPs. Specifically, Section 91 will:

- describe the purposes and scope of the EFP Program (subsection 91(a));

- define terms and phrases used within the proposed regulations (subsection 91(b));
- establish the application procedures and fees, including pre-application consultation and application requirements (subsection 91(c));
- establish the process for reviewing and accepting EFP applications by the Department (subsection 91(d));
- establish the process for public notice of and comment on an EFP application (subsection 91(e));
- establish the process for Commission action on an EFP application, including the requirement for grounds for permit denial (subsection 91(f));
- establish the process for Department issuance of an EFP (subsection (91(g));
- establish the permit standard terms are set forth on form DFW 1103 (subsections 91(h));
- establish that permit special conditions may be placed on an EFP for research purposes and the conservation of marine resources and the environment and are specified on form DFW 1103 (subsection 91(i));
- establish that it is unlawful to operate an EFP in violation of the permit standard terms and special conditions (subsection 91(j));
- describe the types of updates and amendments that may be made to an approved EFP (subsection 91(k));
- describe the annual and final reporting requirements for EFPs (subsection 91(l));
- establish the permit tiers and annual permit fees, including a permit fee reduction option (subsection 91(m));
- describe the term of the EFP and the permit renewal process (subsection 91(n));
- describe the causes and procedures for permit suspension, revocation, cancellation, or non-renewal (subsection 91(o)); and
- establish the process for reconsideration (subsection 91(p)).

In addition, Section 90 is proposed to be amended to add a sunset provision (subsection 90(f)) specifying that this section shall expire on April 1, 2023, which is the project end date of the Box Crab EFPs. Additionally, the title of Section 90 will be amended to read “Issuance of Box Crab Experimental Fishing Permits” and a new provision will be added (subsection 90(g)) to make clear

that Section 90 applies only to the EFPs issued for the box crab program, and that the requirements of proposed Section 91 will not affect the Box Crab EFPs.

Section 704 will be amended to add fee items to the EFP fee schedule pertaining to Phase II, which includes an application fee, initial permit issuance fee, annual permit fees for Tiers 1–4 EFPs, and minor and major amendment fees. In addition, new form DFW 1103 (NEW 04/06/21), Marine Fisheries: Experimental Fishing Permit Terms and Conditions, is proposed to be incorporated by reference in Section 704 as it would be unduly expensive and impractical to publish in Title 14, CCR. This form, containing the EFP number, a description of the authorized activity, a list of all persons and vessels conducting activities under the EFP, and a list of the permit standard terms and special conditions, is required for all EFPs and is necessary for compliance with Section 91 and FGC Section 1022.

Amendments to regulations in sections 120.1, and 180 are necessary to reflect changes in the FGC pursuant to AB 1573 and ensure consistency with the proposed regulations.

Amendments to regulations in Section 149 would eliminate cross reference to Section 149.3 for experimental market squid vessel permits and nonoperational provisions of Section 149.3 would be repealed. Future experimental fishing for market squid will be subject to the Phase II aspect of the EFP Program.

Other minor, non-substantive editorial changes (subsection renumbering) to Section 704 are proposed to improve clarity and consistency of the regulations. Non-substantive updates are proposed to the authority and reference citations for Section 180 to list sections individually.

Benefit of the Regulations

The Legislature has declared that well-supervised, strategic experimentation that tests hypotheses and/or new management approaches and that aligns with overarching state management goals and research priorities would likely accelerate the development of innovative scientific and technology tools for improving state fisheries management. It is the policy of the state to establish an EFP Program that fosters collaborative and cooperative marine fisheries research that renders critical information for designing policies and management strategies to better protect California's ocean ecosystems and the fisheries and coastal communities they support. The proposed regulations would establish a state process for integrating innovation, science, management, and leveraging collaboration with the fishing industry and research entities to fill data gaps and address priority research questions necessary to manage the long-term sustainability of state fisheries and other marine living resources. This rulemaking would provide a path for innovation and research in the existing management system by permitting limited exemptions from state fishing law and regulations for experimental fishing activities.

The benefits of the proposed regulations include valuable and productive fisheries research for state managed fisheries to meet the challenges of rapid changes in ocean conditions and the climate; promotion of collaboration with stakeholders to develop information available for management and, in some cases, inform the development of fisheries management plans; and consistency with the goals of the Marine Life Management Act (FGC Section 7050 et seq.). The proposed regulations will provide benefits by reducing the regulatory burden for stakeholders to pursue on-the-water

experimentation and exploration that will improve or provide for new opportunities for fishing, provide stronger protections for marine habitats, and ensure long-term sustainable fisheries in California.

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 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 CCR 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.

Public Participation

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing to be held on Thursday, October 14, 2021, at 8:30 a.m. or as soon thereafter as the matter may be heard. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing to be held on Thursday, December 16, 2021, at 8:30 a.m. or as soon thereafter as the matter may be heard. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899.

It is requested, but not required, that written comments be submitted on or before 5:00 p.m. on December 2, 2021 at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on December 10, 2021. All comments must be received no later than December 16, 2021, during the webinar/teleconference hearing. If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244-2090.

Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller-Henson, Executive Director, Fish and Game Commission, 715 P Street, Box 944209,

Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the regulatory process to Melissa Miller-Henson or Jenn Greaves at FGC@fgc.ca.gov or at the preceding address or phone number. **Marina Som, Environmental Scientist, Department of Fish and Wildlife, has been designated to respond to questions on the substance of the proposed regulations. Ms. Som can be reached at (858) 467-4229 or Marina.som@wildlife.ca.gov.**

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Assessment

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 Business, 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 negatively impacted by the proposed regulations because the regulations are voluntary to those who will seek an EFP. The actual number of businesses that may be impacted by the proposed regulations is unknown, but based on estimates and interest from stakeholders may range around 100 businesses amongst commercial fisheries, commercial passenger fishing vessels (CPFVs), or partnerships of these types of business with research organizations. The proposed regulations implement a process for the Commission to authorize and the Department to issue EFPs. The economic impact to the to the state is anticipated to be unchanged with no adverse impacts to California businesses or their ability to compete with other 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. The proposed regulations would establish a framework for permitting marine fishing activities that are otherwise prohibited under the FGC or state regulations that can improve the management of state fisheries, including but not limited to improving the sustainability of state marine fisheries, efficiency of fishing effort, and reducing capture/discard of non-target species. Any future management action stemming from the outcome of the EFP research will need to be addressed in a separate rulemaking process.

The Commission anticipates indirect benefits to the health and welfare of California residents. Providing opportunities for experimental fishing activities promotes the development of information available for the conservation and sustainable use of California's marine resources which provide valuable economic, aesthetic, recreational, educational, scientific, nutritional, social, and historic benefits to the people of the state.

The Commission does not anticipate any benefits to worker safety because the proposed regulations would not have any impact on working conditions.

The Commission anticipates benefits to the state's environment in the sustainable management of natural resources.

(c) Cost Impacts on a Representative Private Person or Business:

The proposed regulations are necessary to fully implement a state EFP Program in accordance with FGC Section 1022. California businesses may elect to participate in the EFP program and will likely do so if they perceive that the cost of the EFP fees will yield an economically beneficial result from the authorized experimental marine fishing activities. Applicants and EFP holders will incur costs related to application review, EFP issuance, and oversight on EFP implementation by the Department. The proposed EFP fee items include application fee (\$153.25), initial permit issuance fee (\$880.50), permit fee based on the specific permit tier (Tier 1 \$450.50, Tier 2 \$1,063.50, Tier 3 \$4,471.00, Tier 4 \$9,786.50), and amendment fees (minor \$191.50, major \$455.75). The proposed fees are necessary to recover a portion of the implementation and administrative costs of the Department relating to the EFP, as provided under FGC subdivision 1022(g).

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

There will be ongoing costs for the Department to implement the EFP Program. A portion of these costs would be offset by the proposed EFP Program fees which were determined using a "minimum" cost recovery approach. The Department conducted a Cost Recovery Analysis (Attachment 1 to the Initial Statement of Reasons) to evaluate the full range of cost recovery for Department and Commission staff time. The analysis includes a "minimum," "mid," and "high" cost recovery for permit fees. Recognizing the potential benefit of the EFP Program to the state, the Department opted for "minimum" cost recovery of permanent staff time and enforcement (i.e., recovery of only certain aspects of costs at the lowest level of functioning service) and not to pursue full cost recovery as provided by Fish and Game Code subdivision 1022(g).

There are no cost or savings in federal funding to the state.

(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.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated: September 10, 2021

Melissa Miller-Henson
Executive Director