

State of California
Fish and Game Commission
Initial Statement of Reasons for Regulatory Action

Add Section 91 and Amend Sections 90, 120.1, 180 and 704; and
Amend Section 149 and Repeal Section 149.3,
Title 14, California Code of Regulations
Re: Implementation of Experimental Fishing Permit Program (Phase II) and
Repeal of Nonoperational Experimental Market Squid Vessel Permits

I. Date of Initial Statement of Reasons: September 8, 2021

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: August 18-19, 2021

Location: Teleconference

(b) Discussion Hearing

Date: October 13-14, 2021

Location: Teleconference

(c) Adoption Hearing

Date: December 15-16, 2021

Location: Sacramento, CA

III. Description of Regulatory Action

(a) Statement of Specific Purpose of Regulatory Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR).

This regulatory proposal will add Section 91, and amend sections 90 and 704, to allow for full implementation of 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 sections 120.1, and 180 for consistency with changes to the Fish and Game Code (FGC) pertaining to experimental marine fishing activities as well as amend Section 149 and repeal Section 149.3 to remove nonoperational experimental market squid vessel permit provisions to harmonize regulations associated with experimental fishing activities and avoid confusion over the use of the term “experimental” in reference to other permits outside of the scope of the EFP Program.

The purpose of the EFP Program is to gather information for improving fisheries management by allowing researchers and fishers to engage in commercial or recreational marine fishing activities that are otherwise prohibited.

BACKGROUND

Effective January 1, 2019, AB 1573 repealed the experimental gear permit (EGP) provisions in FGC Section 8606 and added new FGC Section 1022, which provides for the development of a state EFP Program to facilitate fishery-related exploration and experimentation to inform fisheries management. The new law requires the California Fish and Game Commission

(Commission) to establish by regulation an “expeditious process” for California Department of Fish and Wildlife (Department) review, public review and comment, Commission approval, and prompt Department issuance of EFPs (FGC subdivision 1022(b)). Under FGC Section 1022, the Commission has the authority to approve commercial or recreational marine fishing activities that would otherwise be prohibited by FGC or regulations adopted thereto for the purposes of research, education, limited testing, data collection, compensation fishing, conservation engineering, exploratory fishing, or any combination of these purposes. The new law requires EFPs to be issued by the Department, subject to certain conditions and requirements deemed necessary by the Commission to ensure that activities authorized under the EFP are consistent with overarching state management goals and policies set forth in FGC Section 7050 and any applicable fishery management plan (FGC subdivision 1022(a)).

Implementation of the EFP Program will occur in two phases. EFP Program Phase I regulations (sections 90 and 704), established a process of issuing EFPs to those applicants previously approved by the Commission in 2018 to receive an EGP for a collaborative experimental research program to evaluate the potential for a brown box crab (*Lopholithodes foraminatus*) fishery in California (herein referred to as box crab program) (OAL file # 2020-0227-02SR, effective March 24, 2020). At its December 12, 2018 meeting, and prior to the repeal of FGC Section 8606, the Commission approved the issuance of eight box crab EGPs to applicants who had requested to participate in the box crab program. Those permits were valid for 12 months, starting April 1, 2019, with the potential for annual renewal for a total project span of up to four consecutive years of permitted fishing. Consequently, following the repeal of FGC Section 8606, new regulations pursuant to FGC Section 1022 needed to be established to support the continuation of the box crab program before the EGPs expired on March 31, 2020. The regulations adopted by the Commission for EFP Phase I ensured that the current box crab program can continue without regulatory disruption while a larger programmatic rulemaking (EFP Program Phase II) can be developed to build out the EFP Program pursuant to FGC Section 1022.

EFP Program Phase II (this rulemaking) builds in more time for public scoping and participation (see Section III(f) of this document) to implement FGC Section 1022 in its entirety. The proposed regulations will establish a comprehensive regulatory framework for experimental marine fishing activities pursuant to FGC Section 1022 (i.e., EFP Program), which will include a process for application, Department review, public comment, Commission action, and Department issuance and administration of EFPs. Once the EFP Program is fully implemented, there will be some overlap between Phase I and Phase II regulations. For purposes of this document, “Box Crab EFPs” are those EFPs that were issued pursuant to Section 90 and prior to the implementation of the proposed regulations for Phase II. “New” EFPs are those that will be issued in accordance with proposed Section 91 regulations.

CURRENT REGULATIONS

As noted above, Phase I regulations for the EFP Program in Section 90 established specific requirements and limited issuance of EFPs to applicants who were previously approved in 2018 to participate in the box crab program. Currently, requests for new EFPs cannot be accommodated until Phase II regulations are in place (proposed Section 91).

Subsection 120.1(c) states a bycatch reduction device must be in possession on vessels for commercial pink shrimp trawling, and under this rulemaking would be updated to reflect the authority from the repealed FGC Section 8606 to FGC Section 1022.

Subsection 180(g) states a person may apply for an EGP when denied a trap permit, and under this rulemaking would be updated to reflect the authority from the repealed FGC Section 8606 to FGC Section 1022.

Existing fees and forms listed in Section 704 for EFPs will be updated to reflect the proposed new fee license items and new form.

Section 149 and 149.3 enumerate requirements for commercial take of market squid and experimental market squid vessel permits, respectively; amendments to Section 149 would eliminate cross reference to Section 149.3 for such vessel permits. Section 149.3 would be repealed, and future experimental fishing for market squid will be subject to the EFP Phase II aspect of the EFP Program.

PROPOSED REGULATORY CHANGES

Amend Section 90; Issuance of Box Crab Experimental Fishing Permits.

The title of Section 90 will be amended from “Issuance of Experimental Fishing Permits” to read “Issuance of Box Crab Experimental Fishing Permits.” This is necessary to clarify that current regulations under Section 90 are specific to EFPs for the box crab program only. All new EFPs must abide by the procedures and requirements set forth in proposed Section 91 (see new subsection 90(g)).

Add new Subsection 90(f); Box Crab EFP Sunset Clause.

Section 90 will be amended to add a sunset provision (subsection 90(f)) that specifies that the section shall expire on April 1, 2023, which is the project end date for the box crab program. Because the purpose of Section 90 is to allow the box crab program to proceed without regulatory disruption while the EFP Program is being built out pursuant to FGC Section 1022, Section 90 will no longer be necessary once the box crab program ceases. This provision is necessary to render Section 90 void once the specified date is reached.

Add new Subsection 90(g); Clarification of Box Crab and other EFPs.

The addition of new subsection 90(g) will make it clear that the regulations under current Section 90 apply to Box Crab EFPs only. All new EFPs will be subject to the procedures and requirements established in proposed Section 91. This provision is necessary for clarity and to inform the public of the scope of authorization that may be obtained under Section 90. Since both Section 90 and proposed Section 91 use similar terms (e.g., EFP, permit standard terms and special conditions, issuance, and renewal), separating the Box Crab EFPs (Phase I regulations) from new EFPs (proposed Phase II regulations) will help avoid any potential confusion.

Add new Section 91; Marine Fisheries: Experimental Fishing Permit Program.

Proposed new Section 91 establishes a comprehensive state EFP program to comply with the objectives specified in AB 1573 and requirements of FGC Section 1022. The proposed regulations will establish the procedures for application submittal, Department review, public

notice and comment, Commission approval, and Department issuance and administration of the EFP. Table 1 provides a summary of Section 91 subject areas by subsection number.

The purpose of new Section 91 is to establish the structure for regulating the EFP Program statewide, and is necessary to explain the scope of the regulations. Section 91 will be referred throughout this document as “this Section.”

Table 1. Summary of Proposed Subject Areas for Section 91, Marine Fisheries: Experimental Fishing Permit Program.

PROPOSED SUBSECTION NUMBER	REGULATION SUBJECT
(a)	Marine Fisheries: Experimental Fishing Permit (EFP) Program purpose and scope
(b)	Definitions
(c)	Application procedures and application fee
(c)(1)	Pre-application consultation
(c)(2)	An application packet
(d)	Department review of an EFP application
(e)	Public notice of and comment on an EFP application
(f)	Commission action on an EFP application
(g)	Department issuance of an EFP
(h)	Permit standard terms
(i)	Permit special conditions
(j)	Prohibition on operation of an EFP in violation of the permit standard terms and special conditions
(k)	Permit updates and amendments
(l)	Reports
(m)	Permit tier structure and fees
(m)(1)	Initial permit issuance fee
(m)(2)	Annual permit fees
(m)(3)	Permit fee reduction option
(n)	Term of permit and renewal
(o)	Permit revocation, suspension, cancellation, or non-renewal
(p)	Reconsideration

Add Subsection 91(a); Experimental Fishing Permits Purpose and Scope.

Subsection 91(a) informs the public that the Commission may authorize the Department to issue an EFP for commercial and recreational marine fishing activities for one or more

combined purposes as specified in FGC Section 1022 (which, upon approval, are “authorized activities”) pursuant to the procedures, conditions, and criteria of this Section. Pursuant to FGC subdivision 1022(a), the EFP exempts an EFP holder only from the provisions of FGC and regulations adopted pursuant to FGC specified in the permit, and all other laws and regulations not specified as part of the EFP shall remain in effect. Pursuant to FGC subdivisions 1022(a) and (b), the EFP shall be issued by the Department pursuant to the process proposed under this Section.

This provision reaffirms the statutory requirements of the EFP (FGC Section 1022), and is necessary to provide clarity to the public of activities that are authorized under the scope of the proposed regulations and to distinguish the roles and responsibilities of the Commission and the Department in implementing the proposed regulations.

Add Subsection 91(b); Definitions.

Subsection 91(b) defines the terms and phrases used within the proposed regulations. These definitions are necessary in that they provide the public with detail necessary to understand and comply with FGC Section 1022 and the proposed regulations.

For the purposes of the proposed regulations, subsection 91(b) explains that the definitions contained in FGC subdivision 1022(h) for “compensation fishing,” “conservation engineering,” and “exploratory fishing” apply. This is necessary to clarify to the public how those terms are used in the regulations and ensure consistency with the terms and definitions used in statute.

Subsection 91(b) further defines other specific terms that are pertinent to the proposed regulations.

Subsection 91(b)(1) defines “accepted application” as an EFP application packet accepted by the Department as complete and eligible for further consideration by the Commission. This definition is necessary to provide a means to clarify the status of an EFP application.

Subsection 91(b)(2) defines “applicant” as the individual or entity applying for the EFP who, upon approval by the Commission, becomes the EFP holder. This definition is necessary to clarify to the public that an EFP applicant can be either an individual or an entity, and that individual or entity will become the EFP holder once the EFP is approved by the Commission.

Subsection 91(b)(3) defines “authorized activities” as activities approved under the EFP for one or any combination of the following purposes: research, education, limited testing, data collection, compensation fishing, conservation engineering, or exploratory fishing. This definition is necessary to provide a means to refer to the activities authorized by the Commission for the purposes of the EFP in a short and succinct way.

Subsection 91(b)(4) defines “authorized agent” as an individual who may conduct authorized activities and serve in place of the EFP holder for all activities requiring the presence or action of the EFP holder and who is named on the DFW Form 1103, if applicable. The term authorized agent requires a definition because authorized agents need to be differentiated from the other key participants (i.e., EFP holder). There are a number of unique duties and responsibilities in the regulations that only apply to the EFP holder; therefore, this definition is necessary to avoid confusion between the roles of the EFP holder and their authorized agents.

Subsection 91(b)(5) defines “EFP holder” as the individual or entity to whom an EFP is issued. This definition is necessary to provide clarity as to who has primary responsibility to oversee the activities authorized under the EFP.

Subsection 91(b)(6) defines “entity” as a corporation, firm, partnership, association, institution or affiliation, Native American tribe, or a local, state, or federal agency. This is necessary to clarify a term necessary to differentiate between the type of permit holders (i.e., an individual or an entity).

Subsection 91(b)(7) defines “entity administrator” as an individual designated by an entity who shall oversee all activities conducted under the EFP on the entity’s behalf and serve as the primary point of contact for Department inquiries for the permit. Both the entity and entity administrator shall be liable for any violations of this section or any authorizations, terms, or conditions of the EFP. The entity administrator on a EFP may be changed by the entity, when necessary, subject to the approval by the Department (i.e., minor amendment). This is necessary to identify the person with the authority to legally act on the behalf of the entity.

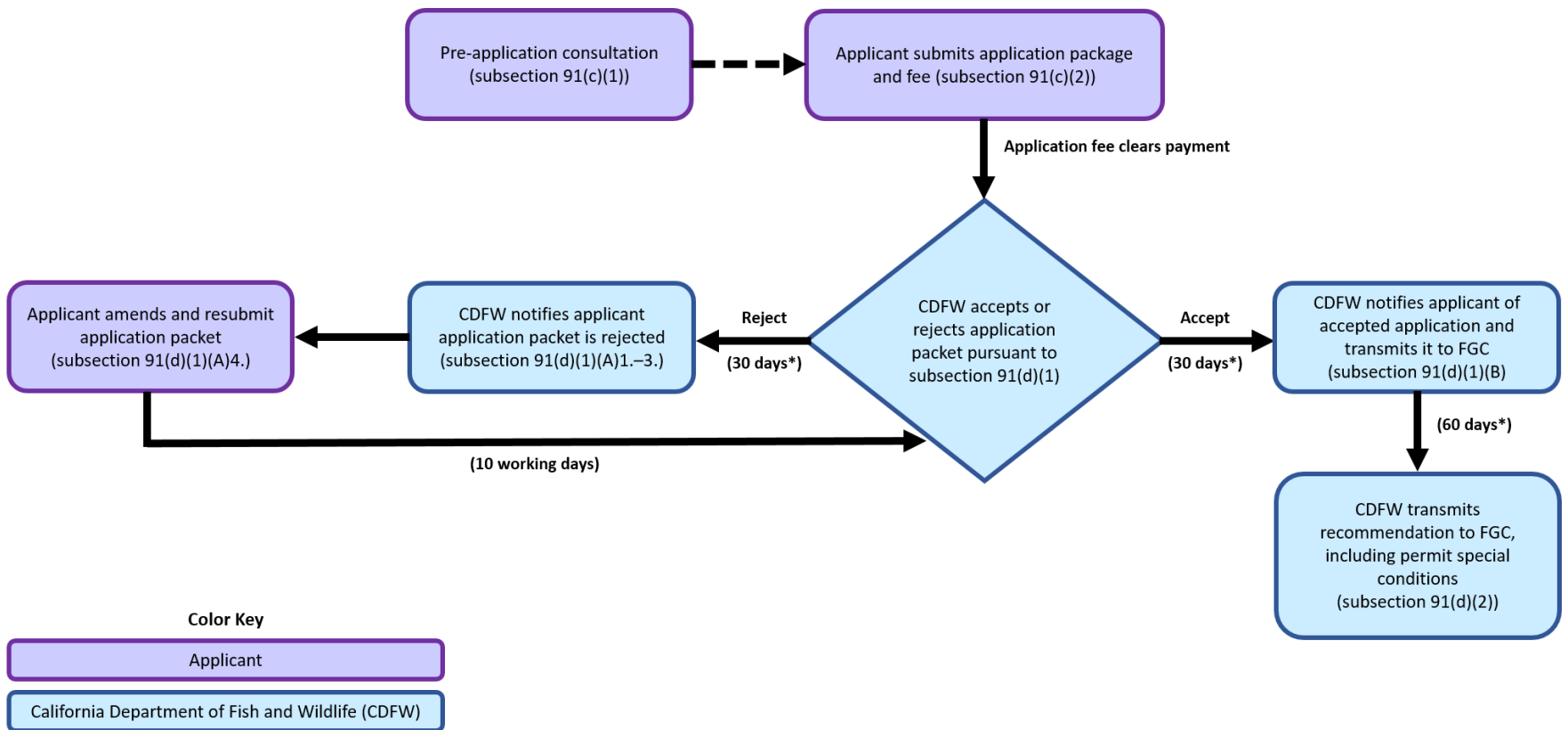
Subsection 91(b)(8) defines “interested persons” as every person who has informed the Commission of their interest in writing and has provided their mailing address or email address to be notified of any accepted applications. This definition is necessary to inform to the public that interest must be expressed in writing to the Commission for consideration as an interested person, and whom the Commission is obligated to notify as part of the public notice process.

Subsection 91(b)(9) defines “key participants” as project participants, including the applicant and, if applicable, the entity administrator and any authorized agents. This definition is necessary to refer to those involved in the EFP project in a short and succinct way.

Subsection 91(b)(10) defines “project” as the experimental fishing project for which an EFP is needed. This definition is necessary to further clarify what is meant by the term project in context of the proposed regulations.

Add Subsection 91(c); Application Procedures and Application Fee.

Subsection 91(c) specifies the application process for an EFP (Figure 1). The provision requires the EFP application to be submitted to the Department in accordance with the provisions of subsections 91(c)(1), if applicable, and 91(c)(2). This subsection is necessary for clarity and consistency with FGC subdivision 1022(b) that requires the Commission to establish a process for Department review of EFPs prior to Commission approval.



*CDFW 30- and 60-day review period may be extended pursuant to subsection 91(d)(3)

Figure 1. Flow diagram of the EFP application submittal and review process pursuant to subsections 91(c) and 91(d).

Add Subsection 91(c)(1); Pre-Application Consultation.

Subsection 91(c)(1) specifies that consultation with the Department's Marine Region is required before applying for an EFP ("pre-application consultation") if assistance will be requested from the Department to carry out the duties and responsibilities identified under subsection 91(c)(2)(C) or a reduction to the annual permit fee will be requested (see subsection 91(m)(3)) as part of the application. It also specifies that any request for consultation must be submitted to the Department by writing to the contact listed on the Department's EFP web page (<https://wildlife.ca.gov/Conservation/Marine/EFP>). This subsection is necessary to clarify the circumstances in which an applicant is required to consult with the Department and the procedure that must be followed to request the pre-application consultation with the Department.

The purpose of the pre-application consultation is to provide Department with preliminary information regarding the EFP project and to provide the applicant with preliminary information about EFP requirements, procedural requirements, environmental concerns, and other relevant matters before an application is submitted to the Department for formal review pursuant to subsection (d). During the pre-application consultation process, the applicant will be asked to explain or clarify the EFP project and Marine Region staff will provide preliminary feedback on the project, including any perceived issues or potential problems. The more information that an applicant can provide during the pre-application process, the more thorough the feedback from the Department.

For the purposes of performing any of the duties and responsibilities listed under subsection 91(c)(2)(C), applicants seeking assistance from the Department (i.e., a Tier 2 or Tier 4 EFP, see subsection 91(m)(2)) must complete pre-application consultation with Department Marine Region staff. The pre-application consultation does not guarantee the approval of the application by the Commission. This requirement is necessary to provide a process for an applicant to request that the Department provide technical or scientific assistance to carry out the project. This requirement is necessary for information sharing between the applicant and the Department to ensure that the applicant has all the pertinent information about the Department's capacity to assist on a proposed EFP project before they decide to apply for either a Tier 2 or Tier 4 permit.

Subsection 91(c)(1) also specifies that consultation prior to application is also required if an application will include a request for permit fee reduction option (see subsection 91(m)(3)). This requirement is a cross referenced in subsection 91(m)(3)(B) and is necessary to provide clarification on how an applicant may request pre-application consultation with the Department.

For all other EFP proposals, pre-application consultation is encouraged but not required. Early consultation allows for effective and efficient coordination among prospective applicants, the Department, the Commission, and, if applicable, federal resource agencies, to avoid delays in the application review and approval process and implementation. Early engagement with the Department can create further context to inform the Commission in its decision-making and help to clarify application requirements, identify the appropriate permit tier for a proposed project, or identify possible substantive issues with the proposed EFP which could impede review or result in denial of an application.

Add Subsection 91(c)(2); An Application Packet.

Subsection 91(c)(2) specifies how to apply for an EFP, and the information required to complete an application packet. All applicants must submit a written application packet to the Department either electronically via email or delivered to the mailing address listed on the Department EFP web page (<https://wildlife.ca.gov/Conservation/Marine/EFP>). The provision specifies that a complete application packet must contain all required elements specified in subsections 91(c)(2)(A)–(G): Contact Information for Key Participants, Statement of Purpose, Statement of Qualifications, Specific Permit Tier, Project Description, Project Vessels, and Signature. The applicant must also pay a non-refundable application fee as listed in subsection 704(b)(1). In accordance with the Department’s payment policy, fee payment may be made by personal or business check or credit card authorization form (DFW 1443b (8/15)) enclosed with the application packet, or through the Department’s online Licenses Sales and Services (<https://www.ca.wildlifelicense.com/InternetSales>). This provision ensures a standardized process to receive applications and collect appropriate information with which to review the application. This provision is also necessary to clearly inform the public of the required contents of an EFP application, how to submit the application for Department review, and the fee requirement for the application.

Add Subsection 91(c)(2)(A); Contact Information for Key Participants.

Subsection 91(c)(2)(A) requires applicants to identify and provide contact information for all key participants on the project, including: name, title, affiliation, mailing address, email address, telephone number, and the Automated License Data System (ALDS) Get Outdoors ID (GOID) (for activities pertaining to recreational fisheries) or commercial fishing license (CFL) number (for activities pertaining to commercial fisheries). If a key participant does not have a GOID or CFL number, the provision (subsection 91(c)(2)(A)1.) requires that they provide the following information: their true name, residence address, date of birth, height, color of eyes, color of hair, weight, gender, telephone number, email address, and a form of identification as listed in subsection 700.4(c). This information is necessary for the Department to create a new customer profile in ALDS for tracking purposes. If the applicant is an entity, the contact information of the entity administrator is required (subsection 91(c)(2)(A)2.).

This provision is necessary so the Department knows who to contact regarding questions or issues with the application or permit and to identify individuals that will be involved in managing and implementing the EFP. The GOID and CFL numbers are necessary for the Department to not only keep record of EFP key participants involved in the EFP but also to retrieve the license and permit history from ALDS for review pursuant to subsection 91(d)). Because the purpose of the EFP is to allow for fishery-related activities that are otherwise prohibited, to assure public trust and confidence in the EFP Program, it is imperative that each key participant on an EFP project has a history of compliance (i.e., in good standing) with state and federal laws and regulations (see subsection 91(d)(1)(A)2.).

Add Subsection 91(c)(2)(B); Statement of Purpose.

Subsection 91(c)(2)(B) requires applicants to provide a statement of purpose that clearly describes the specific purpose and goals of the project (subsection 91(c)(2)(B)1.). The statement of purpose must also identify the activities of the project that are currently prohibited under FGC or state fishing regulations, and the reasons why those activities should be

permitted under the EFP (subsection 91(c)(2)(B)2.). Because the practical regulatory effect of an EFP is the authorization to carry out certain commercial or recreational activities that otherwise would be prohibited under current state fishing laws or regulations, this information is not only necessary but essential to allow the Department to evaluate whether the project meets the intended purposes of the EFP and is consistent with FGC Section 7050, and to identify the exemptions that are needed pursuant to FGC subdivision 1022(a)(4).

Add Subsection 91(c)(2)(C); Statement of Qualifications.

Subsection 91(c)(2)(C) requires applicants provide a statement of relevant qualifications to demonstrate the ability of the applicant and, if applicable, other key participants to carry out the proposed project, including leading, managing, supervising, and coordinating the proposed fishing activities as described in subsection 91(c)(2)(C)1.–6. If the applicant does not have the capability to directly perform or oversee the performance of those duties and responsibilities, they may request assistance from the Department pursuant to subsection 91(c)(1). As discussed in subsection 91(c)(1) above, the Department’s recommendation to the Commission concerning a Tier 2 or Tier 4 EFP is contingent upon a determination of its capacity (i.e., available resources) to accommodate an applicant’s request.

This subsection is necessary for applicants to demonstrate capabilities and competency of the key participants to supervise and perform the necessary tasks to successfully carry out an EFP.

Add Subsection 91(c)(2)(D); Specific Permit Tier.

Subsection 91(c)(2)(D) requires applicants to specify the permit tier (see subsection 91(m)(2)) they are seeking and, if applicable, any consultation with the Department that has occurred. If the applicant has consulted with the Department pursuant to subsection 91(c)(1), the name of the Department staff and their contact information is required. This subsection is necessary to assist the Department in determining if the proposed project meets the qualifications of the requested permit tier and confirm whether consultation with the Department has occurred prior to application, as required pursuant to subsection 91(c)(2)(C) and subsection 91(m)(3).

Add Subsection 91(c)(2)(E); Project Description.

Subsection 91(c)(2)(E) requires applicants to provide a detailed description of the proposed project. The project description must contain all of the following components and include sufficient information for the Department to evaluate the proposed project: description of the experimental design and research plan (subsection 91(c)(2)(E)1.), a list of target species expected to be harvested as samples or compensation (subsection 91(c)(2)(E)2.), a list of species expected to be taken incidental to fishing conducted under the EFP (subsection 91(c)(2)(E)3.), description of the mechanisms or measures to ensure that any proposed catch limits (i.e., weight or number) are not exceeded and are accurately tracked or monitored (subsection 91(c)(2)(E)4.), description of any potential impacts on existing fisheries, habitat, or possible incidental interactions with threatened, endangered, or protected species that could occur as a result of the project (subsection 91(c)(2)(E)5.), the type and amount of gear to be used (subsection 91(c)(2)(E)6.), and the location and timing of the project (subsection 91(c)(2)(E)7.). The project description must include also identify any fish activity that is expected to occur on the same trip as the project vessels for purposes other than those

provided by the EFP (subsection 91(c)(2)(E)7.). This information is necessary to evaluate project feasibility, identify any factors that could be grounds for denial of the application (see subsection 91(f)(2)), and identify whether any permit special conditions would be needed pursuant to subsection 91(i)(2) for research purposes and the conservation of marine resources and the environment.

Add Subsection 91(c)(2)(F); Project Vessels.

If vessels will be used to conduct the project, subsection 91(c)(2)(F) requires applicants to provide information about each vessel to be authorized under the EFP, including: the name of the vessel (subsection 91(c)(2)(F)1.), the name and contact information of the vessel owners and any operators (subsection 91(c)(2)(F)2.), and proof of registration (subsections 91(c)(2)(F)3. or 91(c)(2)(F)4.). For any vessel that will be used in a commercial fishing activity relating to the EFP, the provision (subsection 91(c)(2)(F)3.) requires applicants provide the commercial boat registration number issued to the vessel pursuant to FGC Section 7881. For any vessel that will not be used in commercial fishing activity relating to the EFP, the commercial boat registration number issued pursuant to FGC Section 7881 or a copy of the United States Coast Guard Certificate of Documentation (or a copy of the vessel's state registration if there is no Certificate of Documentation for the vessel) is required (subsection 91(c)(2)(F)4.). This information is necessary to identify the participating vessels for permit tracking and enforcement purposes.

Add Subsection 91(c)(2)(G); Signature and Date.

Subsection 91(c)(2)(G) requires applicants to sign and date the application. In place of a handwritten signature, a digital or electronic signature is acceptable if the application packet is submitted to the Department in an electronic format, such as PDF. This is necessary to set the date of the application and to certify that all information provided on the application is true and accurate. Applicants may be held accountable for any material misrepresentation associated with the EFP application (see subsections 91(f)(2)(B) and 91(o)).

Add Subsection 91(d); Department Review of an EFP Application.

The purpose of subsection 91(d) is to establish the procedures by which the Department receives, accepts, and reviews EFP applications, and transmits accepted applications and Department recommendations to the Commission for consideration. The Department application review process is depicted in Figure 1. This provision is necessary to create uniformity, consistency, and transparency in the Department application review process.

Subsection 91(d)(1) makes clear that following receipt of an application packet, the Department will determine if the application is complete within 30 days from the date the application fee payment clears, and will notify the applicant of its determination to accept or reject the application, and then notify the Commission of its determination to accept an application. This is necessary to provide the public with an understanding of the duration of the process. Based on experience in processing EGPs and consultation with federal EFP managers, the Department has determined that 30 days is an appropriate amount of time to complete an initial evaluation of the application packet for completeness and determine eligibility of key participants.

Subsection 91(d)(1)(A)1. provides that the Department must reject an application as incomplete if it is missing any of the required information specified in subsection 91(c)(2). This step is necessary to ensure that applicants understand that all required information is included in the application packet to improve the efficiency of the technical review process (see subsection 91(d)(2)).

Subsection 91(d)(1)(A)2. specifies the conditions for rejection of an application based on the past conduct of key participants (i.e., failed to comply with the terms or conditions of a state or federal fishing permit, violated any provision of the FGC or regulation adopted thereto, violated any applicable federal or state law regulating fishing activity, had a fishing license or permit suspended or revoked, or has been convicted of a crime of moral turpitude). Because the purpose of the EFP is to allow for fishery-related activities that are otherwise prohibited, to assure public trust and confidence in the EFP Program, it is imperative that each key participant on an EFP project has a history of compliance with state and federal marine fishing laws and regulations. The Department has determined that these are important factors in determining whether the key participant is fit for an EFP, and this provision is necessary to make clear such factors that will be considered for rejection of an EFP application.

If an application is rejected, subsection 91(d)(1)(A)3. requires the Department to notify the applicant and explain the specific reason for the rejection. The Department will accept an amended application under the same application fee if the applicant submits it within 10 working days of the rejection notice (subsection 91(d)(1)(A)4.). This is necessary to establish the action that must be taken by the Department after an application is rejected, including providing notice to and an opportunity for applicants to respond and correct any deficiencies with their application within a reasonable timeframe.

Subsection 91(d)(1)(A)5. specifies that the Department must notify the applicant of its final determination within 30 days of receiving an amended application in accordance with subsections 91(d)(1)(A)3. or 91(d)(1)(B). This is necessary to establish consistent procedures for informing applicants regarding the rejection or acceptance of an amended application.

If the application is deemed complete and not rejected, subsection 91(d)(1)(B) requires the Department to notify the applicant that the application has been accepted and transmit the accepted application to the Commission. This step is necessary to establish consistent procedures for informing applicants and the Commission of an accepted application.

Subsection 91(d)(2) establishes a 60-day timeframe for the Department to complete technical review of an accepted application and forward to the Commission for further consideration, its recommendation, including special conditions (see subsection 91(i)). This provision also provides that the Department may request of applicants any additional information it deems necessary to evaluate the project for purposes of developing permit special conditions, and shall inform the Commission of any failure by the applicant to comply with the information request. Based on experience in processing EGPs and consultation with federal EFP managers, the Department has determined that the 60-day technical review period is a reasonable timeframe for it to complete a detailed, substantive review of and develop recommendations for Commission action on an accepted application. While subsection 91(c) lists the information that the Department will need to conduct technical review; in some cases, additional information may be needed to verify or clarify something provided in the application.

This subsection is necessary to provide the Department the flexibility to request additional information when it needs to do so to fully evaluate the application for applicability and feasibility pursuant to the requirements of this Section and FGC Section 1022. In addition, this subsection ensures that particular issues or potential impacts related to the nature and scope of the project are addressed in the Department's recommendation of permit special conditions. As the agency tasked with reviewing, issuing, and overseeing EFPs, the Department has a vested interest in EFP research that has the potential to inform fisheries management as well as ensuring that authorized activities can be reasonably implemented, monitored, and enforced.

While subsections 91(d)(1) and 91(d)(2) specify a 30-day and 60-day review period, respectively, to promote transparency and predictability of the Department's review of an EFP application, subsection 91(d)(3) enables the Department to extend the review time. The Department must provide written notification of the time extension under subsection 91(d)(1) to the applicant, and under subsection 91(d)(2) to both the Commission and the applicant. The written notification must include the reason for why the additional time is required. This is necessary to ensure that the application review process is predictable while providing the Department the flexibility needed to respond to unforeseen circumstances or complex technical issues that could prolong the review time of an application. For example, a time extension may be necessary to work with the applicant to resolve issues pertaining to experimental design, for environmental review pursuant to the California Environmental Quality Act (CEQA), or to consult with subject matter experts from other agencies or organizations.

Add Subsection 91(e); Public Notice of and Comment on an EFP Application.

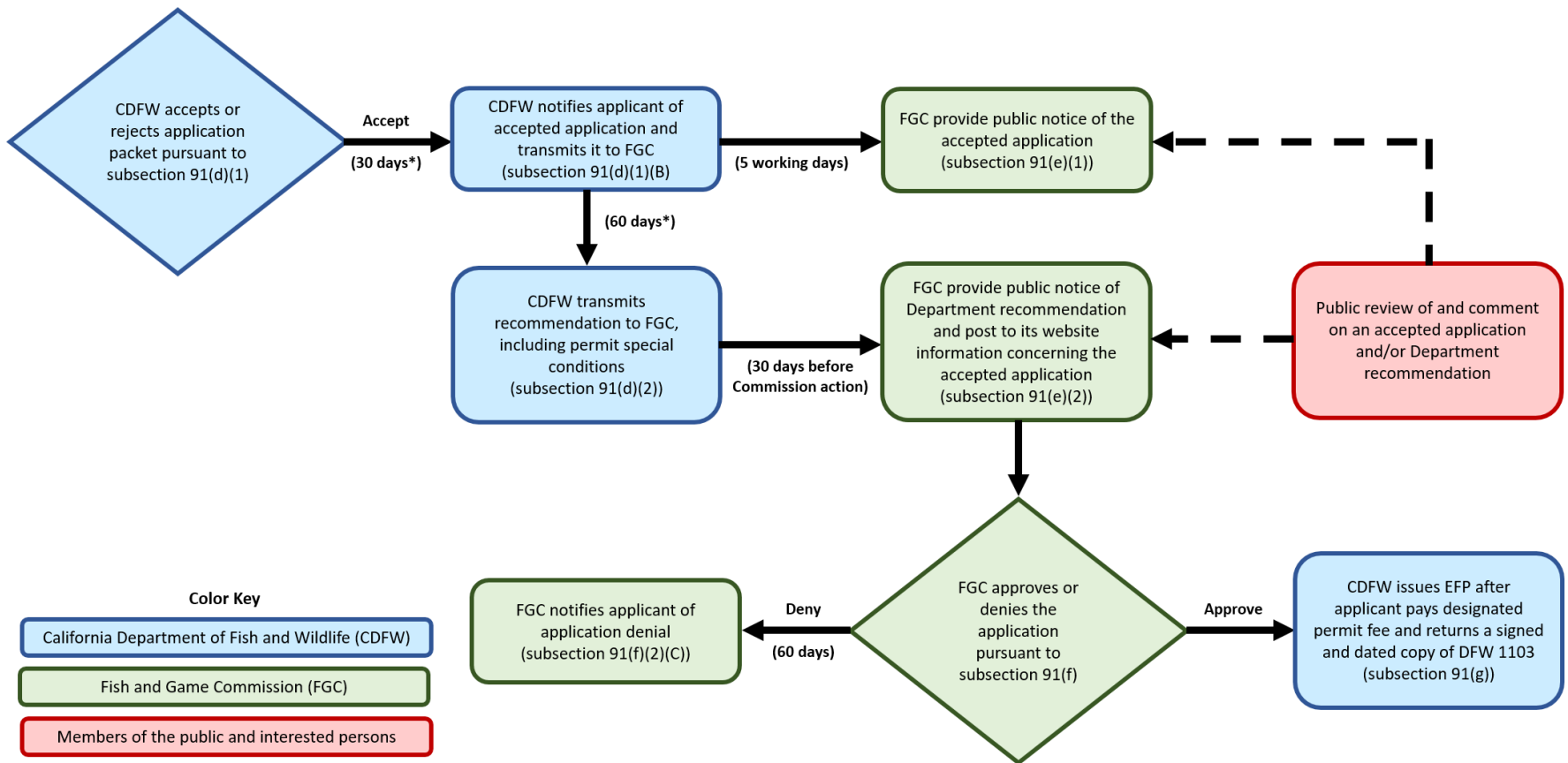
Subsection 91(e) establishes the Commission's process for notifying the public and interested parties of an accepted application (Figure 2). This subsection is necessary for clarity and consistency with FGC subdivision 1022(b) that requires the Commission to establish a process for public notice and comments on EFPs.

Subsection 91(e)(1) specifies that the Commission will send notice of receipt of an accepted EFP application to interested persons pursuant to subsection 91(e)(3) within five working days of receiving an accepted application from the Department. Based on experience in preparing and distributing other notices, the Commission has determined that five working days is an adequate amount of time for Commission staff to prepare and distribute a public notice concerning an accepted application. The notice will include information about the proposed EFP project, species, and how members of the public may comment. This subsection is necessary to provide opportunity for public review and make clear to interested parties on how they may comment at the key points during the application review and approval process.

Subsection 91(e)(2) specifies that the Commission will send notice of receipt of the Department's recommendation on an accepted application to interested persons pursuant to subsection 91(e)(3), and post information concerning the accepted application, including public notices themselves (subsection 91(e)(2)(A)), the application (subsection 91(e)(2)(B)), and Department recommendation (subsection 91(e)(2)(C)) to its website at least 30 days before an action is taken to approve or deny the application. The subsection is necessary to ensure that the public is informed and provided adequate opportunity to review and comment at the key points during the application review and approval process. It is the policy of the state to foster

an open, collaborative decision-making process that involves all interested parties in marine living resource management decisions.

Subsection 91(e)(3) establishes the procedures by which interested persons and the public will be notified of an accepted EFP application and the Department's recommendation. The Commission will mail or email every person who has expressed interest to be notified concerning matters related to EFPs (subsection 91(e)(3)(A)). The Commission may also mail or email any person or group of persons whom the Commission believes to be interested in receiving EFP notifications (subsection 91(e)(3)(B)). This subsection is necessary to clarify how notices will be distributed and who will receive direct EFP notifications from the Commission.



*CDFW 30- and 60-day review period may be extended pursuant to subsection 91(d)(3)

Figure 2. Flow diagram of EFP processes for Department acceptance of an EFP application (subsection (d)(1)(B)), public review and comment (subsection 91(e)), Commission action (subsection 91(f)), and Department issuance (subsection 91(g)).

Add Subsection 91(f); Commission Action on an EFP Application.

Subsection 91(f) establishes the procedures for the Commission to consider and act on an EFP application (Figure 2). This subsection is necessary for clarity and consistency with FGC subdivision 1022(b) that requires the Commission to establish a process for Commission approval of EFPs. The provision (subsection 91(f)(1)) requires that the Commission schedule for consideration an accepted application and any proposed permit special conditions at its next available meeting, but not sooner than 30 days after providing public notice pursuant to subsection 91(e)(2). This subsection is necessary to ensure prompt action by the Commission on an EFP application in accordance with FGC subdivision 1022(b). The provision (subsection 91(f)(2)) also specifies that the Commission may act to approve or deny an accepted application and/or any permit special conditions. If an application is approved by the Commission, subsection 91(f)(2)(A) requires the Department to issue the EFP pursuant to subsection (g). This is necessary to clarify to the public that the Department is responsible for permit issuance and administration after an EFP application has been approved by the Commission.

Subsection 90(f)(2)(B) lists the grounds for which the Commission may deny an EFP. This provision is necessary to provide clarity and transparency to the public regarding reasons the Commission may act to deny an EFP application or an amendment to an EFP. The provision (subsection 91(f)(2)(B)1.) specifies that an EFP application may be denied if the applicant fails to disclose material information or provides false, inaccurate, or misleading information. This is necessary to deter false statements or misrepresentation of material facts relating to the application. It is imperative that the information provided to the Department and the Commission be accurate and complete. The provision (subsection 91(f)(2)(B)2.) also specifies that an EFP may be denied if the project would have any adverse impact, either on its own or combined with other approved EFPs, to: any resource or resource allocation, established fisheries, or marine habitat; or other adverse impact on the well-being or sustainability of any fish stock, marine mammal, or species designated as Threatened, Endangered, or Fully Protected. Resource allocation includes the sustainability of fisheries resources for utilization and the Department resources to manage those activities (e.g., staff capacity and time). This is necessary to ensure that the EFP does not conflict with the state's management objectives and responsibility to ensure the conservation and sustainable use of the state's marine living resources. Finally, the provision (subsection 91(f)(2)(B)3.) specifies that an EFP may be denied if it is not consistent with the regulation proposed under Section 91, FGC sections 1022 and 7050, any applicable fishery management plan, or other applicable laws for which an exemption is not sought. This is necessary to ensure that the EFP does not conflict with other applicable policies, or federal or state laws or regulation governing marine fishing or the conservation of marine living resources.

If an EFP is denied, the provision (subsection 91(f)(2)(C)) requires the Commission to provide a written notice to the applicant within 60 days of the denial explaining the reason(s) for the denial. This is necessary to ensure that the applicant is informed of the reason for the action by the Commission.

Add Subsection 91(g); Department Issuance of an EFP.

Subsection 91(g) elaborates on the Department permit issuance process (Figure 2). Specifically, upon approval of an application by the Commission, the Department is required to send to the applicant for signature a completed form DFW 1103, including the attachment of any permit special conditions approved pursuant to subsection 91(f)(2) (subsection 91(g)(1)). The permit shall be issued upon Department's receipt of payment of the applicable EFP fees and a signed and dated copy of form DFW 1103. This subsection is necessary to clarify the actions to be taken by the Department and the applicant after an application has been approved by the Commission.

Add Subsection 91(h); Permit Standard Terms.

Subsection 91(h) establishes that the standard terms of the EFP are specified on form DFW 1103, Marine Fisheries: Experimental Fishing Permit Terms and Conditions. Form DFW 1103 is incorporated by reference in subsection 704(b)(2) to specify the requirements that apply to all EFP projects (see subsection 704(b)(2) for a detailed description and discussion of the permit standard terms). This is necessary to ensure compliance with the requirements of this Section and FGC Section 1022.

Add Subsection 91(i); Permit Special Conditions.

Subsection 91(i) describes permit special conditions specific to an EFP project. Permit special conditions may be placed on a permit as necessary for research purposes or the conservation and management of marine resources and the environment (subsection 91(i)(2)) and, upon EFP issuance, are specified on form DFW 1103 (subsection 91(i)(1)). This provision is necessary to clarify that special conditions are additional to and do not fall under the standard terms of the permit. The following general categories (subsections 91(i)(2)(A)–(I)) are provided as examples of the types of special conditions and are not meant to be an exhaustive list.

- The maximum amount and size of each species that can be caught, harvested and/or landed during the term of the project, including trip, annual or other harvest limitations.
- The time(s) and place(s) where authorized activities may be conducted.
- A citation of current fishing laws and regulations from which the permit is exempted.
- The type, size, and amount of gear that may be used by each person or vessel operating under the EFP, and any other restrictions placed on the gear.
- The number, size, name, and identification number of any vessels and/or names and addresses of any authorized agents authorized to conduct fishing activities under the EFP and whether additional fishing permits or licenses are required.
- The method in which vessel or gear should be marked or identified to indicate the activity is operating under a current EFP.
- Any necessary procedures and/or equipment to be used to monitor and track the authorized activities, collect data, or provide for personnel safety.
- Data reporting requirements for the authorized activities including the method, content, format, and timeframe submitting data to the Department.

- Other conditions as may be necessary to ensure compliance with this Section or FGC Section 1022.

Add Subsection 91(j); Prohibition on Operation of an EFP in Violation of Permit Standard Terms and Special Conditions.

Subsection 91(j) establishes that it is unlawful to operate under an EFP in violation of permit standard terms and special conditions set forth on form DFW 1103. This is necessary for law enforcement to ensure that all activities conducted under the EFP comply with the requirements of this Section and FGC Section 1022.

Add Subsection 91(k); Permit Updates and Amendments.

Subsection 91(k) prescribes the manner in which an EFP may be amended after it has been approved by the Commission.

Subsection 91(k)(1) establishes that the Department may amend permit special conditions at any time during the term of the EFP as it deems necessary for research purposes or the conservation and management of marine resources and the environment. This enables the Department to act quickly and make amendments to the special conditions of an existing EFP based on new information about the on-the-water characteristics of the authorized activities to ensure protection of marine resources and the environment, as required by FGC Section 1022.

Subsection 91(k)(1)(A) further specifies that Department authorized amendments shall not exceed the allowances placed on the permit by the Commission concerning amount and type of species that may be taken, geographic location where fishing may occur, amount or type of gear that can be used, and the number of vessels or persons that may conduct the authorized activities (subsection 91(k)(1)(A)1.–4.). This is necessary to clarify the circumstances under which the permit special conditions may be amended by the Department. The proposed amendment process continues to subject all permit special conditions to the Commission's discretion, but does so in a way that provides the Department the ability to adequately address immediate problems with any given EFP.

Upon amending the permit special conditions, subsection 91(k)(1)(B) specifies that the Department must provide written notice to the EFP holder and the Commission, including the reasons for the amendment and the EFP holder's right to request reconsideration. This is necessary to not only inform the public on how the Department will contact EFP holders to inform them that amendments have been made to the special conditions of their permits, but provide information on how the EFP holder may seek review of the Department's decision to amend the special conditions of a permit.

Subsection 91(k)(1)(C) specifies that the Department may suspend the EFP if the EFP holder fails to return a signed and dated copy of the amended form DFW 1103 within 10 days following the date of the written notice from the Department. This is necessary to ensure timely actions are taken concerning an amended form DFW 1103 and also clarifies what action the Department may take to enforce compliance. A signed and dated DFW 1103 is proof to the Department that the EFP holder understands all related permit standard terms and special conditions.

Subsection 91(k)(2) specifies that EFP holders may request amendments to their EFP at any time during the term of the permit, by submitting a written request to the Department explaining the reason for the amendment and, if applicable, paying the applicable non-refundable amendment fee specified in Section 704. Subsection 91(k)(2)(A) further describes the types of amendments that EFP holders may request: administrative updates (subsection 91(k)(2)(A)1.), minor amendments (subsection 91(k)(2)(A)2.), and major amendments (subsection 91(k)(2)(A)3.). Administrative updates and minor amendments may be reviewed and approved by the Department while major amendments (proposed changes that exceed existing permit allowances) require public review and Commission action (subsections 91(d)(2) through 91(g)). As a matter of public discourse, this process is necessary to provide an opportunity for the public to review and comment on proposed changes that are considered major amendments prior to Commission action on a requested amendment. Because the purpose of the EFP is to discover the characteristics of experimental fishing activities while active on the water, this is necessary to enable EFP holders to make adjustments to their projects as needed.

Subsection 91(k)(2)(B) explains the action the Department will take if a request for administrative update or minor amendment is rejected. It specifies that the Department must provide written notification to the EFP holder explaining the reason for the rejection and their right to file a request for reconsideration. This provision is necessary to provide for consistent and complete documentation by the Department, and ensure that the EFP holder is fully informed.

Subsection 91(k)(3) specifies that approved amendments do not change or extend the expiration date of the EFP. This provision is necessary to make clear to the public that the expiration date of the EFP is not amendable.

Add Subsection 91(l); Reports.

Subsection 91(l) enumerates the general reporting requirements for all EFPs. Subsection 91(l)(1) specifies that the EFP holder is required to submit an annual report by the date specified in the permit special conditions summarizing the findings and activities completed during the term of the EFP and any additional information as required by form DFW 1103. It will be requested that the summary include a description of any impediments encountered or deviations that occurred in carrying out the EFP.

Subsection 91(l)(2) specifies that the EFP holder must submit a final report to the Department no later than 60 days after the EFP expires. The final report must contain: a summary describing the EFP project and its outcomes (e.g., research results and findings) (subsection 91(l)(2)(A); a discussion of the results and findings, including conclusions about the effectiveness of the authorized activity and recommendations for improving fisheries management or expanding fishing opportunities in the state (subsection 91(l)(2)(B); any additional information required as part of the special conditions of the EFP (subsection 91(l)(2)(C); and a list of all key participants on the EFP to acknowledge their role and contribution to the EFP research (subsection 91(l)(2)(D). The EFP holder is also required to submit any scientific reports or documents created as a result of the EFP, pursuant to FGC subdivision 1022(c).

This subsection is necessary to inform the Department, Commission, and public about the progress of the project, successes achieved and/or discoveries made as a result of the EFP, as well as any challenges or impediments encountered. The Commission may request the Department provide a presentation of the results of the EFP project. Because the findings of a project may justify regulatory change proposals or management action, both the annual and final reports may serve as supporting documents (subdivision 11346.2(b)(3), California Government Code). It is necessary to specify a timeline within which the Department must receive the report to clarify the reporting requirements and ensure timely reporting, and 60 days grants the EFP holder sufficient time for final data analyses and drafting of findings.

In addition, this is necessary to record and acknowledge the work that has been supported by the EFP Program. Pursuant to FGC Section 1022, the Department is required to post, and annually update, information regarding approved EFPs on its website (FGC subdivision 1022(e)) and report to the appropriate legislative committee summarizing the benefits of the EFP Program every five years starting no later than January 1, 2025 (FGC subdivision 1022(f)).

Add Subsection 91(m); Permit Tier Structure and Fees.

Subsection 91(m) establish the permit tiers and fees for the EFP and is necessary to reasonably recover implementation and administrative costs of the Department relating to the EFP in accordance with FGC Section 1022.

Add Subsection 91(m)(1); Initial Permit Issuance Fee.

Subsection 91(m)(1) establishes the initial permit issuance fee, which is a non-refundable fee to recover implementation and administrative costs of the Commission and the Department relating to the EFP. Except as provided for in subsection 91(m)(3), the Department is required to charge an initial permit issuance fee specified in Section 704(b)(3) for issuance of an EFP. Along with the annual permit fee, this one-time fee for initial permit issuance fee (for year 1 EFP only) must be paid to the Department prior to issuance of the EFP. This is necessary for the Commission and the Department to partially recover costs as provided for under FGC subdivision 1022(g) related to checking the eligibility of key participants by reviewing the Statement of Qualifications pursuant to 91(c)(2)(C), reviewing the technical and scientific merits of the application (91(c)(2)(E)), conditioning of the proposed EFP for Commission consideration (91(i)), transmitting the Department recommendation to the Commission, preparing public notice for distribution, reviewing Department recommendation and developing staff recommendation for Commission consideration.

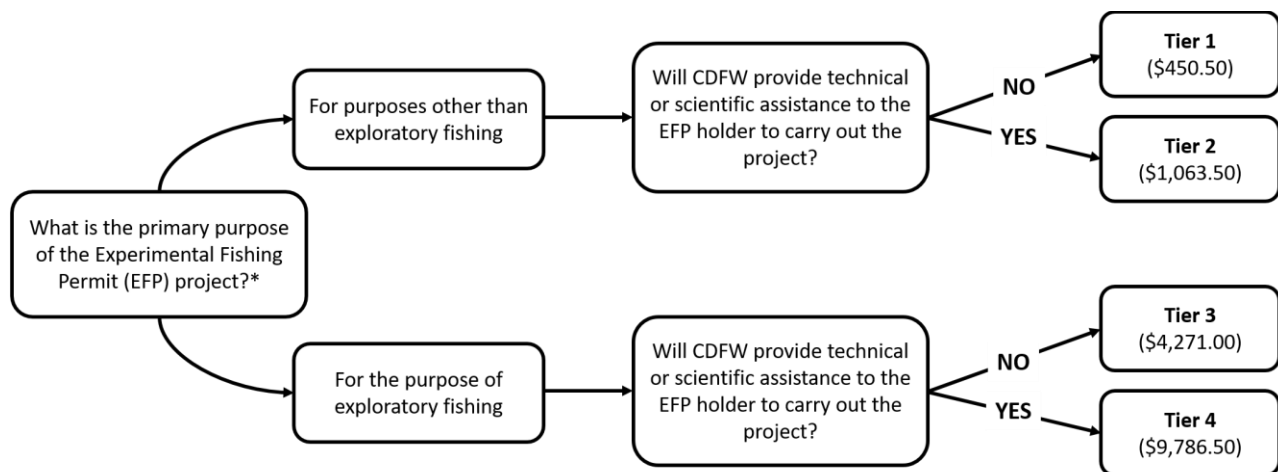
Add Section 91(m)(2); Annual Permit Fees.

Subsection 91(m)(2) establishes the permit tiers and associated non-refundable annual permit fees. The provision makes clear that, except as provided for in subsection (m)(3), payment of the designated annual permit fee listed in Section 704(b)(4) is required for all EFPs. The annual permit fee is determined by the permit tier approved for a specific project. Based on complexity, each project will be assigned a designated permit tier. Given that the EFP may be approved for a variety of purposes (i.e., for research, education, limited testing, data collection, compensation fishing, conservation engineering, exploratory fishing, or a variety of these purposes), the proposed permit tier structure provides predictable permit fees that are tailored

to the project. The annual permit fee will also be dependent on whether the project is facilitated by the Department (see subsection 91(c)(2)(C)). Subsections 91(m)(2)(A) through (D) define the permit tiers which the Department will use to determine the applicable permit fee for a project (Figure 3).

- Tier 1. EFP for the purpose identified under subsection 91(b)(3) except exploratory fishing.
- Tier 2. EFP for the purpose identified under subsection 91(b)(3) except for exploratory fishing *and* facilitated by the Department pursuant to subsection 91(c)(2)(C).
- Tier 3. EFP for the purpose of exploratory fishing.
- Tier 4. EFP for the purpose of exploratory fishing *and* facilitated by the Department pursuant to subsection 91(c)(2)(C).

Tiers 1 and 2 EFPs will be based around existing fisheries whereas Tiers 3 and 4 EFPs are specific to the development of new fishery resources. With greater potential for impacts, exploratory fishing will be subject to a higher level of Department oversight than other purposes. This subsection is necessary to categorize the varying scope and complexity of each type of EFP for the purpose of cost recovery pursuant to FGC subdivision 1022(g). The proposed four-tier permit fee structure provides for more permitting options for applicants and ensures that permit fees do not exceed the actual implementation and administrative costs of the Department relating to the EFP (see subsection 704(b)(4)).



* Pursuant to Fish and Game Code Section 1022, the EFP may be approved for one or any combination of the following purposes: research, educational, limited testing, data collection, compensation fishing, conservation engineering, or exploratory fishing.

Figure 3. Decision tree for determining the applicable permit tier for a project.

Add Subsection 91(m)(3); Permit Fee Reduction Option.

To accommodate stakeholder requests to provide lower permit fees, subsection 91(m)(3) establishes a permit fee reduction option which will allow for collaboration in the form of a 50/50 split of the initial permit issuance fee listed in subsection 704(b)(3) and the annual permit fee listed in subsection 704(b)(4) between the Department and EFP holders on specific EFPs identified by the Department as necessary to address a priority or need for fishery

management. The Commission will consider granting this option on a case-by-case basis, as recommended by the Department. If granted, the annual permit fee will be reduced by 50% for the applicable permit tier (see subsections 91(m)(2) and 704(b)(4)). The initial permit issuance fee (see subsections 91(m)(1) and 704(b)(3)) will also be reduced by 50% under this option. The permit fee reduction option is necessary to incentivize collaboration on research and experimentation that are of interest and importance for managing marine fisheries.

As an example, subsection 91(m)(3)(A) provides a list of general categories or areas of fishery research that may merit special consideration under the permit fee reduction option. These general categories include: innovative fishing gear and techniques to reduce incidental capture of non-target species, habitat impacts, and/or interactions with protected species (subsection 91(m)(3)(A)1.); data collection to fill essential fishery information gaps or monitoring needs for fisheries and associated habitats (subsection 91(m)(3)(A)2.); new data or methods to quantify catch and effort and/or standardized data reporting for recreational or commercial fisheries (subsection 91(m)(3)(A)4.); and other areas of research that may be necessary for the purpose of fishery management pursuant to FGC Section 7050 (subsection 91(m)(3)(A)4.). While it is impossible to provide an exhaustive list of specific research needs for management of the state's marine fisheries, this list of provided categories is necessary to inform applicants of the types of projects that are of interest to the Department for purposes of the reduced permit fee option.

Subsection 91(m)(3)(B) requires pre-application consultation with the Department pursuant to subsection 91(c)(1) for consideration of a permit fee reduction. This is necessary because it enables the Department to provide feedback on a project and ensures that the project is designed in consultation with the Department, incorporating elements it deems necessary to inform management and conservation of the state's marine resources.

Add Subsection 91(n); Term of Permit and Renewal.

Subsection 91(n) explains the permit renewal requirements. The provision clarifies that an EFP may be renewed annually by the Department up to three times (for a maximum project span of four consecutive years). Because an EFP is valid for a period of 12 months, any renewal must be done before the permit expiration date. Subsections 91(n)(1) through (3) further specify the conditions for renewal. For permit renewal, a written request to the email or mailing address listed on the Department's EFP web page (subsection 91(n)(1)) must be received by the Department 60 days before the permit expiration date. This provision is necessary to explain how and when an EFP holder can request permit renewal.

EFP holders are expected to renew their permits in a timely manner or cease all authorized activities by the permit expiration date to prevent a lapse in permit coverage. The Department has determined that 60 days is sufficient time for the Department to review and approve a renewal request pursuant to subsection 91(n)(2). Within the 60-day review period, the Department must determine that all key participants on the project have complied with the requirements, terms, and conditions of this Section and form DFW 1103 to approve the permit renewal request (subsection 91(n)(2)). This is necessary for enforcement purposes. The provision (subsection 91(n)(3)) also requires payment of the designated annual permit fee to the Department's License and Revenue Branch (LRB) on or before the permit expiration date of the permit. This is necessary to clarify when the permit fees are due to the Department.

Add Subsection 91(o); Permit Revocation, Suspension, Cancellation, or Non-Renewal.

Subsection 91(o) specifies conditions for revocation, suspension, cancellation, or non-renewal of an EFP. It is necessary to provide information to the public on conditions that may warrant these actions by the Department.

Subsection 91(o)(1) specifies a process for permits to be cancelled by EFP holder requests. This provision is necessary to inform the Department of when an EFP is no longer needed for tracking and enforcement purposes, and removes the EFP holder of any requirements or liability attached to the permit.

Subsection 91(o)(2) defines the grounds on which an EFP may be suspended, revoked, cancelled, or denied renewal. The provision provides that Department action may be taken for any of the following reasons: failure to comply with permit authorizations, standard terms and special conditions (subsection 91(o)(2)(A)); failure to comply with any provisions of FGC or regulations adopted thereto that are not exempted by the permit; violation of any federal statute, regulation, or rule related to a regulated fishing activity, or conviction of a crime of moral turpitude (subsection 91(o)(2)(B)); reasons listed in FGC Section 1022 (subsection 91(o)(2)(C)); changes in the law or regulations (FGC or regulations adopted thereto, or federal statute, regulation, or rule) that prohibits the continuation of the authorized activities (subsection 91(o)(2)(D)); submittal of false information by the EFP holder for purposes of obtaining or renewing an EFP (subsection 91(o)(2)(E)); the purpose of the project has been achieved or the EFP produces information at a level deemed by the Department sufficient to support a management action (subsection 91(o)(2)(F)); or failure to pay the designated annual permit fee pursuant to subsection (n)(3) (subsection 91(o)(2)(G)).

This subsection is necessary for transparency and consistency when it comes to Department actions on EFPs. Consistent with Department's role as trustee agency, the Department views experimental fishing as a privilege even beyond recreational or commercial fishing, as the program allows activity that is otherwise unlawful as a tool for research, data collection, and experimentation that may ultimately benefit various fishery participants in the future. As such, the privilege may be withdrawn (i.e., permit suspension or cancellation) or terminated (i.e., permit revocation or non-renewal) under certain circumstances. Subsections 91(o)(2)(A) through (G) are necessary to inform the public of the specific scenarios in which an action may be taken by the Department for resource management and enforcement purposes.

Subsection 91(o)(3) requires the Department to inform the EFP holder if an action is taken against an EFP pursuant to subsection 91(o)(2). A written notification containing the name of the EFP holder, the EFP number, the reason for the Department action and, if applicable, any actions for the EFP holder to correct any deficiencies identified by the Department, and the EFP holder's rights to request reconsideration (see subsection 91(p)) is necessary to provide for consistent and complete documentation by the Department and fully inform the person receiving the notice.

Subsection 91(o)(4) describes actions to be taken by the EFP holder if an EFP is revoked, suspended, or cancelled. If a permit has been suspended or revoked, the provision requires the EFP holder to hand over all records produced under the terms and conditions of the EFP in accordance with the direction provided by the Department. This is necessary for the Department to have a record of the data and information generated under the EFP that may be

useful for current or future fishery management applications, pursuant to the objectives of AB 1573. For any permit that has been cancelled, suspended, revoked, or denied renewal, the EFP holder must turn over all Department-owned equipment (e.g., fishing gear, electronic monitoring equipment, storage devices, trap tags, etc.) that have been issued for the purposes of the project. The provision further specifies that failure to return Department owned equipment is unlawful. This is also necessary to enable the Department to retrieve or recover any Department-owned equipment upon revocation, suspension, or cancellation of a permit.

Add Subsection 91(p); Reconsideration.

Subsection 91(p) specifies a process for reconsideration in the event that a permit is revoked, suspended, cancelled, or amended by the Department or a request for permit renewal or permit amendment is rejected by the Department. This is necessary to establish a uniform and timely process available to all EFP holders, and is a means to contest the Department's decision should an EFP holder disagree with the action. It is necessary to require that the requests be made in writing and address the reasons for the request to allow the Department to review and consider all pertinent information to support a reconsideration request. The 30-day period of such requests is considered to be an adequate time for an EFP holder to prepare and submit a request.

Amend subsection 120.1(c); Testing the Effectiveness of New or Improved Bycatch Reduction Device Designs for Pink Shrimp Trawling.

Existing subsection 120.1(c) states that the Commission may approve an EGP to be issued by the Department for testing the effectiveness of new or improved bycatch reduction device designs pursuant to FGC Section 8606. The proposed amendment would delete current subsection 120.1(c)(2) referencing FGC Section 8606 (repealed 2018). The proposed change is necessary to reflect the changes in the FGC pursuant to AB 1573 and ensure consistency with the proposed EFP Program Phase II regulations. Under the proposed regulations, experimental fishing activities will fall under the purview of the EFP Program.

Amend Section 149; Commercial Taking of Market Squid.

Existing Section 149 enumerates the requirements for the commercial take of market squid. In particular, subsections 149(a), (f) and (j) contain references to existing Section 149.3 concerning experimental market squid vessel permits. Because Section 149.3 will be repealed as part of this current rulemaking, the proposed amendment would delete references to Section 149.3 from current provisions in Section 149 (i.e., subsections 149(a), (f) and (j)). This is necessary to harmonize the regulations and ensure consistency with the proposed EFP Program Phase II regulations.

Repeal Section 149.3; Experimental Market Squid Vessel Permit.

Existing Section 149.3 contains provisions for issuance of experimental market squid vessel permits. The regulations provide that the Commission may issue three non-transferable experimental market squid vessel permits to any individual for the purpose of developing a squid fishery in areas previously not utilized for squid production. Excepting initial permit issuance criteria contained in subsection 149.1(c), these permits are subject to the all the commercial squid fishing regulations and terms and conditions contained in Section 149.1. However, the application deadline for initial permit issuance contained in subsection

149.1(d)(1) was June 30, 2005, with annual permit renewal as prescribed in subsection 149.1(f). Since the deadline to apply for initial permit issuance has passed, Section 149.3 is now outdated. The proposal to repeal Section 149.3 is necessary to eliminate nonoperational provisions and avoid confusion with the use of the term “experimental” in reference to other permits outside of the scope of the EFP Program. Future experimental fishing for market squid will be subject to the Phase II aspect of the EFP Program.

Amend subsection 180(g); Temporary Suspension or Denial of a Trap Permit.

Existing subsection 180(g) states, in part, that if an application for a trap permit is denied by the Department, the permit applicant may apply to the Commission for an EGP under FGC Section 8606. The proposed amendment would remove the reference to FGC Section 8606 (repealed 2018) and update the regulatory language to refer to an EFP and Section 91 of the regulations. The proposed change is necessary to reflect the changes in the FGC pursuant to AB 1573 and ensure consistency with the proposed EFP Program Phase II regulations. Non-substantive updates are proposed to the authority and reference citations for Section 180 to list sections individually.

Amend Section 704; Experimental Fishing Permits; Fees and Forms.

Existing regulations in Section 704 specify the fee and the form for box crab EFP (EFP Phase I regulation) general terms and special conditions. Section 704 will be amended to add new items to the current fee schedule and specify the fees and form that pertain to the box crab EFPs and those that pertain to all new EFPs (EFP Phase II regulation). The fees specified in Section 704 are subject to an annual adjustment pursuant subsection 704(e).

Amend Subsection 704(a); Box Crab Experimental Fishing Permits/Form.

Section 704 will be amended to enumerate the forms and fee requirements for the current Box Crab EFP and all new EFPs approved under the proposed Phase II regulation. Subsection 704(a) will be amended to add “Box Crab Experimental Fishing” to clarify that subsection 704(a) relates to the permit fee and EFP terms and conditions (DFW 1085, NEW 01/01/2020) for the current box crab EFP issued by the Department pursuant to Section 90. This change is necessary to maintain continuity of the terms and conditions specific to the previously approved box crab EFP, including the cost-sharing scheme adopted by the Commission in October 2019 between the Department and the EFP participants, and to avoid confusion with the new fee requirements and terms and conditions form DFW 1103 for EFPs approved and issued under the proposed new Section 91.

Renumber and add new Subsection 704(b); Marine Fisheries: Experimental Fishing Permit Program Fees and Form.

Current subsection 704(b) will be renumbered to new subsection 704(e) and amended (see new see subsection 704(e)) to accommodate new subsections 704(b) through (d).

New subsection 704(b) lists the new fee items proposed under Section 91. The Commission is authorized 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” (FGC subdivision 1022(g)). New subsection 704(b) is necessary for describing and collecting such fees. To establish a “reasonable” fee, the Department identified the services

and related costs of administrating and enforcing the EFPs, evaluated past EGP costs, as well as reached out to the federal EFP managers to inform the Department's cost estimates. The costs of these services are expressed as fee items under Section 704. While the law allows for the Department to fully recover its costs, a full-cost recovery for those services is not sought. The Department conducted a Cost Recovery Analysis (Attachment 1 to this initial statement of reasons (ISOR)) 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. In recognition of the expected benefits of EFPs to the state, some of the costs for the EFP would be shared by the Department (i.e., absorption of costs beyond the "minimum" estimate). Thus, the Department seeks "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). Tables 2 and 3 provide a detailed breakdown of the minimum staffing needs (hours) for each EFP fee item. Temporary staff (e.g., Scientific Aids) may be involved in some level of reviewing and processing EFPs. However, the cost of staff time for these temporary positions is absorbed by the Department and is not included in Tables 2 or 3 as it would not be incurred either directly or indirectly by the applicant/EFP holder.

Add Subsection 704(b)(1); Experimental Fishing Permit Application fee.

Subsection 704(b)(1) specifies a flat fee for all EFP applications (\$153.25). This is necessary for recovering a portion the Department's cost for receiving and reviewing applications in accordance with proposed subsection 91(d)(1). As shown by calculation in Table 3a. below, the Application fee of \$153.25 includes Department staff time to review an application for completeness.

Add Subsection 704(b)(2); Form DFW 1103 (NEW 04/06/21), Marine Fisheries: Experimental Fishing Permit Terms and Conditions.

Subsection 704(b)(2) sets forth the form which is to be signed attached to the printed permit. Form DFW 1103, Marine Fisheries: Experimental Fishing Permit Terms and Conditions (NEW 04/06/21), is incorporated by reference because it would be unduly expensive and impractical to publish it in Title 14, CCR. Form DFW 1103 includes the following fields and sections to capture pertinent information about the permit.

- An "Experimental Fishing Permit No." field is necessary for the Department to track approved permits and provide verification of the approval for the applicant.
- A "Revision Date" field is necessary to capture and track any updates or amendments made to the EFP.
- Fields for the EFP holder/entity administrator and authorized agent names and addresses are necessary to clearly identify all persons approved to conduct the authorized activities for tracking and enforcement purposes.
- A "Vessel Name and ID #" field is necessary to clearly identify all vessels authorized to operate under the permit for tracking and enforcement purposes.
- A "Description of authorized activity" section is necessary to provide the Department a place to briefly describe the project for which the EFP is issued.

- A “Standard Terms” section is necessary to set general permit requirements that apply to all EFPs (see subsection 91(h)). Standard terms are further described below.
- A “Special Conditions” section is necessary to reference the authority in Section 91 to approve and amend special condition and detail the breadth of conditions that may be placed on a specific permit for research purposes and the conservation and management of marine resources and the environment (see subsection 91(i)). Permit special conditions will be added to form DFW 1103.
- A “Receipt and Acknowledgement” section and EFP holder signature and date fields are necessary to provide proof that to the Department that the EFP holder understands and agrees to abide by all standard terms, special conditions, and requirements for permit issuance (i.e., payment of EFP fees and submittal of a signed copy of DFW 1103).
- Additional fields under “Received by License and Revenue Branch (LRB)” for fee amount, EFP number, revision date, and LRB signature and date are necessary for internal tracking purposes.

STANDARD TERMS. As stated above, standard terms are set forth on form DFW 1103 and apply to all EFPs approved by the Commission. Standard terms are necessary to clearly lay out the general requirements and standard of conduct under the EFP and ensure compliance with applicable fishing laws and regulations. The following standard terms apply to all persons and vessels operating under the EFP.

- Standard Term 1 specifies that the permit shall be operated only on the vessels named on the form (if applicable) and either the EFP holder or authorized agent must be aboard the vessel when authorized activities are being conducted. The provision further specifies that both the EFP holder and authorized agent are responsible and accountable for meeting the requirements and limits of the permit. This is necessary to make clear the individuals and vessels who can operate under the EFP for enforcement purposes. This also provides transparency and clarifies the responsibility of the EFP holder and the authorize agent.
- Standard Term 2 requires the EFP holder or authorized agent to have a valid copy of the EFP attached to a signed copy of form DFW 1103 in possession when activities are being conducted under the permit. This is necessary for enforcement purposes.
- Standard Term 3 requires all persons conducting activities under an EFP comply with all appropriate state and federal fishing 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. This is necessary for consistency with FGC subdivision 1022(a)(4) and enforcement purposes. Authorized activities that are exempt from the provisions of the FGC and regulations adopted thereto are specified on DFW 1103; all other applicable laws and regulations shall remain in effect.
- Standard Term 4 requires the EFP holder and authorized agent to cooperate with the Department by allowing personnel designated by the Department to board the fishing vessel on any fishing trip (if applicable) or enter a place of business operated by the EFP holder or authorized agent to retrieve, observe, or inspect any logbook, records,

data, equipment, procedures, or catch throughout the duration of the permit. This is necessary to enable the Department to obtain complete information about the EFP for resource management and enforcement purposes.

- Standard Term 5 requires the EFP holder or authorized agent to provide Department staff with a 24-hour notice prior to every fishing trip. The contact information for Department staff will be provided for this purpose at the time of permit issuance. A 24-hour minimum notification is necessary for tracking and enforcement purposes of fishing activities that are otherwise unauthorized except by the exemptions granted by the EFP (e.g., responding to a call-in tip line for reporting poaching or suspicious activity that is actually authorized under an EFP).

SPECIAL CONDITIONS. Any special conditions placed on the permit pursuant to subsection 91(i) will be added to DFW 1103. Because special conditions are project specific, it is necessary for the Department to provide a list of permit special conditions to make clear the specific special conditions approved for each EFP.

Add Subsection 704(b)(3); Initial Permit Issuance Fee.

Subsection 704(b)(3) specifies the fee in connection with proposed subsection 91(m)(1), and is necessary to recover the cost of the Department and the Commission cost pursuant to FGC subdivision 1022(g). As shown by calculation in Table 3b. below, the Initial Permit Issuance fee of \$880.50 includes Department staff time to review the qualifications and technical merit of the application and prepare the Department's recommendation and for Commission staff to prepare information for public notice.

Add Subsection 704(b)(4); Annual Permit Tier Fees.

Subsection 704(b)(4) specifies the annual permit fees in connection with proposed subsection 91(m)(2). This provision is necessary for the Department to recover cost for overseeing the EFP, consistent with FGC subdivision 1022(g). As discussed above (see subsection 91(m)(2)), permit fees are tiered according to the purpose of the EFP. The Department has determined that there are varying levels of effort involved in the administration of EFPs. It is anticipated that more staff time would be required to oversee EFPs pertaining to exploratory fishing compared to other purposes. Also, additional costs will be incurred for EFP projects that are facilitated (e.g., technical or scientific assistance) to some degree by the Department.

As shown by calculation in Table 3c.1 and 3c.2 below, the Tier 1 fee is \$450.50 and Tier 2 fee is \$1,063.50. However, the Department's LRB staff time is excluded from the cost recovery determination as this is considered a routine a service performed by the Department regardless of the type of permit. In addition, there will be no cost recovery for the law enforcement of Tiers 1 and 2 EFPs. In the interest of achieving the lowest possible annual permit fee, the Department will be absorbing the law enforcement costs for Tiers 1 and 2 EFPs as those would center around existing fisheries. Law enforcement costs, however, are included in the cost recovery for Tiers 3 and 4 EFPs. As shown by calculation in Table 3c.3 and 3c.4 below, the Tier 3 fee is \$4,271 and Tier 4 fee is \$9,786.50. Because special conditions for Tiers 3 and 4 EFPs informing the development of new or emerging fisheries (i.e., exploratory fishing) will be more extensive than Tiers 1 and 2 EFPs for improving the management of existing fisheries, the Department has determined that recovering the minimum estimated cost

for law enforcement is necessary to ensure compliance with the permit terms and special conditions as well as minimize potential conflicts between exploratory fishing EFPs and existing fisheries over resource allocation.

Add Subsection 704(c); Permit Amendment Fees.

Subsection 704(c) specifies the fees in connection with proposed subsections 91(k)(2)(A)2. and (k)(2)(A)3. (minor and major amendments, respectively), and is necessary to recover the Department's cost pursuant to FGC subdivision 1022(g). As shown by calculation in Table 3d.1 below, the minor amendment fee of \$191.50 includes Department staff time to review requested changes that fall within the allowances placed on the original permit. As noted in Table 3d.2 below, the major amendment fee of \$455.75 includes Department and Commission staff time to review and prepare for public notice requested changes to the original permit.

Add Subsection 704(d); Box Crab Experimental Fishing Permits and Form Sunset Clause.

Subsection 704(d) establishes that permit fee and form for the box crab EFP specified under subsection 704(a) will expire on April 1, 2023. This is necessary to clarify that subsection 704(a) will be invalid once the box crab EFP project ceases.

Renumber and Add New Subsection 704(e); Annual Adjustments of Fees.

In existing regulations, subsection 704(b) states that the Department shall annually adjust the fees of all licenses, stamps, permits, tags, or other entitlements required by the regulations of this section pursuant to the provisions of Section 699. Current subsection 704(b) will be renumbered to new subsection 704(e). This change is necessary to accommodate the addition of new fee items pertaining to this rulemaking.

In addition, because Section 699 relies on FGC Section 1050, this provision will be amended to reference the general statutory authority (i.e., FGC Section 1050) for the Department to make annual adjustments to the fees. This change is necessary to correctly rely upon and cite the primary authority under FGC.

Table 2. Cost recovery for Automated License Data System (ALDS) support

a. Startup costs

Cost Description/ Personnel Classification	Program¹	Task	Time (hours)	Rate²	Total Cost
Information Technology Specialist I	ALDS IT	Item setup, configuration, and reporting	48	\$75.05	\$3,602.40
Total startup cost	--	--	--	--	\$3,602.40
Amortized over 5 years	--	--	--	--	\$720.48
Amortized startup cost per item ³	--	--	--	--	\$48.03

b. Ongoing annual program costs

Cost Description/ Personnel Classification	Program¹	Task	Time (hours)	Rate²	Total Cost
Information Technology Specialist I	ALDS IT	Item review	1	\$75.05	\$75.05
Total annual program costs	--	--	--	--	\$75.05
Annual program costs per item ³	--	--	--	--	\$5.00

c. ALDS fee calculation

Cost Description	Rate²	Total Cost
Amortized startup cost per item	--	\$48.03
Annual program costs per item	--	\$5.00
Overhead	24.32%	\$12.90
ALDS system costs per transaction	--	\$0.78
LRB operations cost per transaction	--	\$0.89
Item fee	--	\$67.60
Item fee (rounded to nearest .25) per FGC Section 713	--	\$67.50

Notes:

1. Program abbreviation: ALDS IT= Automated License Data System Information Technology
2. Rate equals median hourly wage with benefits by employee classification, or percentage of overhead.
3. Number of expected items sold per year is 15.

Sources: CalHR California State Civil Service Pay Scales by Classification (updated 1/21/2021); CDFW Budgets Branch for Staff Benefit Rates 2020/21 and Departmental Overhead Rates 2020/21.

Table 3. Estimated costs associated with implementing and administering the EFP Program for permanent Department staff

a. Experimental Fishing Permit application fee

Fee Item/Personnel Classification	Program ¹	Task	Time (hours)	Rate ²	Total Cost
Environmental Scientist – Range C	MR	Review application for completeness	2	\$61.62	\$123.24
Subtotal	--	--	2	--	\$123.24
Overhead	--	--	--	24.32%	\$29.97
Total	--	--	2	--	\$153.21
Item fee (rounded to nearest 0.25) per FGC Section 713	--		--	--	\$153.25

b. Initial permit issuance fee

Fee Item/Personnel Classification	Program ¹	Task	Time (hours)	Rate ²	Total Cost
Environmental Scientist – Range C	MR	Include, but not limited to, review application for content, develop permit special conditions, and prepare Department recommendation for Commission consideration	4	\$61.62	\$246.48
Sr. Environmental Scientist, Supervisor	MR	Review permit special conditions	1	\$96.42	\$96.42
Environmental Program Manager	MR	Review permit special conditions	0.5	\$111.49	\$55.75
Fish and Game Captain	LED	Review of fishing record of key participants and permit special conditions	2	\$92.49	\$184.98
Associate Governmental Program Analyst	LRB	Enter applicant information, assign tracking identification number, process payment, and issue permit	1	\$53.77	\$53.77
Associate Governmental Program Analyst	FGC	Prepare and distribute public notices	1	\$53.77	\$53.77
Sr. Environmental Scientist, Specialist	FGC	Review Department recommendations; prepare staff recommendation for Commission consideration	1	\$70.93	\$70.93
Subtotal ³	--	--	9.5	--	\$708.33
Overhead	--	--	--	24.32%	\$172.27
Total	--	--	9.5	--	\$880.50

c. Experimental Fishing Permit annual permit fee

c.1. Tier 1 EFP

Fee Item/Personnel Classification	Program¹	Task	Time (hours)	Rate²	Total Cost
Environmental Scientist – Range C	MR	Oversight of implementation of permit terms and conditions	5	\$61.62	\$308.10
Fish and Game Warden – Range B	LED	Enforce permit terms and conditions and related statutory and regulatory requirements	5	\$60.62	\$303.10
Fish and Game Lieutenant, Supervisor	LED	Enforce permit terms and conditions and related statutory and regulatory requirements	5	\$80.68	\$403.40
Fish and Game Captain	LED	Enforce permit terms and conditions and related statutory and regulatory requirements	1	\$92.49	\$92.49
Large Vessel	LED	Enforce permit terms and conditions and related statutory and regulatory requirements	5	\$196.00	\$980.00
Associate Governmental Program Analyst	LRB	Process payment and issue permit	1	\$53.77	\$53.77
Subtotal ³	--	--	5	--	\$308.10
Overhead	--	--	--	24.32%	\$74.93
ALDS IT support ⁴	--	--	--	--	\$67.50
Total	--	--	5	--	\$450.53
Item fee (rounded to nearest 0.25) per FGC Section 713	--	--	--	--	\$450.50

c.2. Tier 2 EFP

Fee Item/Personnel Classification	Program¹	Task	Time (hours)	Rate²	Total Cost
Environmental Scientist – Range C	MR	Oversight of implementation of permit terms and conditions	13	\$61.62	\$801.06
Fish and Game Warden – Range B	LED	Enforce permit terms and conditions and related statutory and regulatory requirements	5	\$60.62	\$303.10
Fish and Game Lieutenant, Supervisor	LED	Enforce permit terms and conditions and related statutory and regulatory requirements	5	\$80.68	\$403.40
Fish and Game Captain	LED	Enforce permit terms and conditions and related statutory and regulatory requirements	1	\$92.49	\$92.49
Large Vessel	LED	Enforce permit terms and conditions and related statutory and regulatory requirements	5	\$196.00	\$980.00
Associate Governmental Program Analyst	LRB	Process payment and issue permit	1	\$53.77	\$53.77
Subtotal ³	--	--	13	--	\$801.06
Overhead	--	--	--	24.32%	\$194.82
ALDS IT support ⁴	--	--	--	--	\$67.50
Total	--	--	13	--	\$1,063.38
Item fee (rounded to nearest 0.25) per FGC Section 713	--	--	--	--	\$1,063.50

c.3. Tier 3 EFP

Fee Item/Personnel Classification	Program¹	Task	Time (hours)	Rate²	Total Cost
Environmental Scientist – Range C	MR	Oversight of implementation of permit terms and conditions	26	\$61.62	\$1,602.12
Fish and Game Warden – Range B	LED	Enforce permit terms and conditions and related statutory and regulatory requirements	5	\$60.62	\$303.10
Fish and Game Lieutenant, Supervisor	LED	Enforce permit terms and conditions and related statutory and regulatory requirements	5	\$80.68	\$403.40
Fish and Game Captain	LED	Enforce permit terms and conditions and related statutory and regulatory requirements	1	\$92.49	\$92.49
Large Vessel	LED	Enforce permit terms and conditions and related statutory and regulatory requirements	5	\$196.00	\$980.00
Associate Governmental Program Analyst	LRB	Process payment and issue permit	1	\$53.77	\$53.77
Subtotal ³	--	--	42	--	\$3,381.11
Overhead	--	--	--	24.32%	\$822.29
ALDS IT support ⁴	--	--	--	--	\$67.50
Total	--	--	42	--	\$4,270.90
Item fee (rounded to nearest 0.25) per FGC Section 713	--	--	--	--	\$4,271.00

c.4. Tier 4 EFP

Fee Item/Personnel Classification	Program¹	Task	Time (hours)	Rate²	Total Cost
Environmental Scientist – Range C	MR	Oversight of implementation of permit terms and conditions	98	\$61.62	\$6,038.76
Fish and Game Warden – Range B	LED	Enforce permit terms and conditions and related statutory and regulatory requirements	5	\$60.62	\$303.10
Fish and Game Lieutenant, Supervisor	LED	Enforce permit terms and conditions and related statutory and regulatory requirements	5	\$80.68	\$403.40
Fish and Game Captain	LED	Enforce permit terms and conditions and related statutory and regulatory requirements	1	\$92.49	\$92.49
Large Vessel	LED	Enforce permit terms and conditions and related statutory and regulatory requirements	5	\$196.00	\$980.00
Associate Governmental Program Analyst	LRB	Process payment and issue permit	1	\$53.77	\$53.77
--	--	--	114	--	\$7,817.75
Subtotal ³	--	--	--	24.32%	\$1,901.28
Overhead	--	--	--	--	\$67.50
ALDS IT support ⁴	--	--	114	--	\$9,786.53
Total ³ (rounded to nearest 0.25) per FGC Section 713	--	--	--	--	\$9,786.50

d. Permit amendment fees

d.1. Minor amendment fee

Fee Item/Personnel Classification	Program ¹	Task	Time (hours)	Rate ²	Total Cost
Environmental Scientist – Range C	MR	Review amendment request	1	\$61.62	\$61.62
Fish and Game Captain	LED	Review amendment request	1	\$92.49	\$92.49
Subtotal	--	--	2	--	\$154.11
Overhead	--	--	--	24.32%	\$37.48
Total	--	--	2	--	\$191.59
Item fee (rounded to nearest 0.25) per FGC Section 713	--		--	--	\$191.50

d.2. Major amendment fee

Fee Item/Personnel Classification	Program ¹	Task	Time (hours)	Rate ²	Total Cost
Environmental Scientist – Range C	MR	Include, but not limited to, review amendment request and prepare Department recommendation for Commission consideration	3	\$61.62	\$184.86
Fish and Game Captain	LED	Review amendment request	1	\$92.49	\$92.49
Associate Governmental Program Analyst	FGC	Prepare and distribute public notice	1	\$53.77	\$53.77
Sr. Environmental Scientist (Specialist).	FGC	Prepare staff recommendation for Commission consideration	0.5	\$70.93	\$35.47
--	--	Subtotal	5.5	--	\$366.59
--	--	Overhead	--	24.32%	\$89.15
--	--	Total	5.5	--	\$455.74
Item fee (rounded to nearest 0.25) per FGC Section 713	--		--	--	\$455.75

Notes:

1. Program abbreviation: ALDS IT= Automated License Data System Information Technology; LED= Law Enforcement Division; LRB = License and Revenue Branch, MR= Marine Region, FGC = Fish and Game Commission
2. Rate equals median hourly wage with benefits (60.960% for Peace Officers and 52.734% for Non-Peace Officers) by employee classification, or percentage of overhead.
3. Excludes LRB's costs associated with Associate Governmental Program Analyst classification as intake and processing of fees and permit issuance are routine services provided by the Department LRB all EFP tiers; excludes LED personnel and vessel costs for Tier 1 and Tier 2 EFPs only.
4. See Table 3 for a detailed cost breakdown of tasks related to ALDS IT support.

Cost-sharing by the Department will occur in the form of in-kind services, including permanent staff and vessel time beyond the minimum hours estimated for cost-recovery and other non-permanent staff time (e.g., Scientific Aids).

The estimated costs do not include any applicable license buyer surcharge.

Sources: CalHR California State Civil Service Pay Scales by Classification (updated 1/20/2021); CDFW Budgets Branch for Staff Benefit Rates 2020/21 and Departmental Overhead Rates 2020/21.

(b) Goals and Benefits of the Regulation

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 EFP Program Phase II 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 state managed fisheries research 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 goals of the Marine Life Management Act (Section 7050, et seq., FGC). 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.

(c) Authority and Reference Sections from Fish and Game Code for Regulation

- Section 90:
Authority: Sections 1022, Fish and Game Code.
Reference: Section 1022, Fish and Game Code.
- Section 91:
Authority: Sections 200, 205 and 1022, Fish and Game Code.
Reference: Sections 200, 205 and 1022, Fish and Game Code.
- Section 120.1
Authority: 8591, 8841 and 8842, Fish and Game Code.

Reference: Sections 8591, 8841 and 8842, Fish and Game Code.

- Section 149

Authority: Sections 7078, 7701, 7708, 8026, 8425 and 8429.5, Fish and Game Code.

Reference: Sections 7701, 7708, 8026, 8425, 8429.5, 8429.7, 12159 and 12160, Fish and Game Code.

- Section 149.3

Authority: Sections 7071, 7078 and 8425, Fish and Game Code.

Reference: Sections 7070, 7071, 7075, 7078 and 7083, Fish and Game Code.

- Section 180

Authority: Sections 1022, 7701, 7708, 8491 and 8500, Fish and Game Code.

Reference: Sections 1022, 7700 through 7710.5, 8490, 8491, 8500, 9000 through 9011 and 9015, Fish and Game Code.

- Section 704:

Authority: Sections 713, 1022, and 1050, Fish and Game Code.

Reference: Sections 713, 1022, and 1050, Fish and Game Code.

(d) Specific Technology or Equipment Required by Regulatory Change

The proposed regulations do not mandate use of specific technologies or equipment; however, permit special conditions (subsection 91(e)) may stipulate gear configurations and/or procedures to support a system to monitor and track authorized activities deemed necessary for research purposes and the conservation and management of marine resources and the environment.

(e) Identification of Reports or Documents Supporting Regulation Change

None.

(f) Public Discussions of Proposed Regulations Prior to Notice Publication

March 20, 2019, Sacramento, California. The Department briefed the Commission's Marine Resources Committee (MRC) on the development of the EFP Program, including discussion of the phased approach for program implementation.

January 14, 2020, EFP Program Stakeholder Workshop (In-person and webinar). In collaboration with The Nature Conservancy (TNC), the Department and Commission held a public workshop to inform and solicit feedback and input from stakeholders on potential program components and core considerations in developing the EFP Program.

April 29, 2020, Teleconference. The Department briefed the MRC on key discussion topics and stakeholder recommendations from January 14 EFP Program workshop and progress on developing the implementing regulations for Phase II.

July 29, 2020. Teleconference. The Department updated the MRC on the development of the

proposed Phase II of the EFP Program, including application submittal and approval cycle, cost recovery approach (permit tier structure), and opportunities for enhancing collaboration. The Department noted that it will continue the development of the program while the rulemaking schedule is on hold due to the COVID-19 pandemic.

March 29, 2021. EFP Informational Webinar. The Department hosted a public webinar to provide information on the latest developments in implementing the California Fisheries Innovation Act of 2018. The Department provided an overview of the proposed draft regulatory framework for the EFP Program Phase II. Participants were invited to submit written comments which were discussed during a Q&A session at the end of the webinar.

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

For the subject regulatory proposal, a couple of options for implementing EFP Phase II were considered. Bi-annual (i.e., twice a year) application deadline and approval cycles were considered and rejected due the time sensitive nature of the proposed review process and workload considerations for the reviewing programs within the Department's Marine Region.

Procedures to prioritize projects in regulations were considered but rejected. As part of the proposed approval process, the Commission decides the priorities when it makes decisions on the EFP applications.

A uniform permit fee reduction was considered to accommodate stakeholder requests but rejected. This alternative does not incentivize studies identified by the Department as a critical need or priority for improving fisheries management. In addition, this alternative is inconsistent with FGC subdivision 1022(g), resulting fees fall below reasonable cost recovery for administrating and enforcing EFPs.

No other alternatives have been identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

(b) No Change Alternative

The no change alternative would leave existing regulations in place; thereby, limiting the issuance of EFPs to those previously approved in 2018 for the Box Crab Program (Section 90) which expires in 2023. This would preclude full implementation of the EFP Program and cause the Commission to fall out of compliance with FGC Section 1022 as no new EFPs can be approved or issued under the EFP Program.

V. Mitigation Measures Required by Regulatory Action

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. 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 initial 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 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 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 recovery 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 this ISOR) 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.

VII. Economic Impact Assessment

The state marine fishing economy consists of two industry sectors: 1) fishing operations, transport, and support; and 2) seafood sales, and processing. These sectors include several different marine-related industries: commercial harvesters, seafood processors and dealers, seafood wholesalers and distributors, and retail seafood sales. 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. The Department has received limited feedback from interested parties about their expected participation or the species that they would expect to use the permits for, and thus is not prepared to speculate about participation in the proposed EFP program at this time. However, the proposed regulation has the potential for research that would allow for new fishing opportunities in the state, which could potentially result in a positive economic impact.

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State

The Commission does not anticipate any impacts to the creation or elimination of jobs within the state. The proposed regulations are not likely to have an impact on the number of commercial or sport fishing businesses currently in operation. The proposed regulations establish a regulatory framework for implementing the EFP Program (FGC Section 1022), and any activities authorized under the EFP must not have an adverse impact to established fisheries pursuant to FGC subdivision 1022(a)(2).

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing

Businesses Within the State

The Commission does not anticipate any impacts on the creation of new businesses or the elimination of existing businesses within the state. The proposed regulations establish the regulatory framework that meets the legislative intent for a state EFP Program that would promote collaborative and cooperative fisheries research and develop information for management of state fisheries. Any future management action stemming from the findings of the EFP will need to be addressed in a separate rulemaking process.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State

The Commission does not anticipate any significant impacts on the expansion of businesses currently doing business within the state as the result of the proposed regulations. The intent of the proposed regulations is to provide opportunities for short-term fisheries research that specifically allow EFP holders (and their authorized agents) to conduct commercial or recreational marine fishing activities that would otherwise be prohibited under current state fishing laws or regulations pursuant to FGC Section 1022. Due to the experimental nature of the fishing operations conducted under the EFP and the number of permits expected to be issued (for the purposes of cost recovery, it is estimated to be no more than 15 permits issued at any given time), these permits are not expected to significantly change the level of commercial or recreational fishing activities in California or affect the expansion of businesses currently operating in the state. Any future management action stemming from the findings of the EFP will need to be addressed in a separate rulemaking process.

(d) Benefits of the Regulation to the Health and Welfare of California Residents

The Commission anticipates indirect benefits to the health and welfare of California residents. In addition to delivering effect outcomes that protect the state's natural resources, port communities, and coastal economies; the proposed EFP Program is anticipated to produce more sustainable seafood through improved fishing practices and expand seafood choices by opening new fishing opportunities in the state for emerging species.

(e) Benefits of the Regulation to Worker Safety

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

(f) Benefits of the Regulation to the State's Environment

The Commission anticipates benefits to the state's environment in the sustainable management of natural resources. It is the policy of the state to ensure conservation, sustainable use, and where feasible, restoration of California's marine living resources for the benefit of all the citizens of the state (FGC subdivision 7050(b)). The proposed regulations will allow for experimentation and innovation that may improve the health, sustainability, and management of commercial and recreational marine fisheries.

Informative Digest/Policy Statement Overview

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR).

The California Department of Fish and Wildlife (Department) is recommending that California Fish and Game Commission (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 by the department (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.

Attachment 1 to the Initial Statement of Reasons (ISOR)

Experimental Fishing Permit Program Phase II Cost Recovery Analysis for Permit Fees

Pursuant to Fish and Game Code (FGC) subdivision 1022(g), the Fish and Game Commission (Commission) may establish a fee schedule to fully recover, but not exceed, all reasonable implementation and administrative costs of the Commission and the California Department of Fish and Wildlife (Department) relating to the experimental fishing permit (EFP). To determine what fees are reasonable, the Department considered both its and the Commission's cost of doing business. Estimates of the Commission and the Department staff time (by classification and median hourly rates) to complete EFP related assignments or responsibilities (i.e., application review, development of recommendations, preparation of public notices, issuance of permits, oversight, and enforcement of EFPs) were considered as part of the cost estimating process.

Due to the difficulty of predicting costs for a new permit program that can accommodate multiple purposes with varying levels of Department facilitation of the permit, the fee determination process used a range of cost estimates for the annual permit fee (minimum, mid, and high; see Table 1). It was determined that minimum cost recovery would yield the most accurate estimate of staff time as it is based on lowest operational costs and can be applied across all purposes of the EFP (Table 2). Mid- cost (Table 3) and High- cost (Table 4) recovery estimates were considered but rejected as the resulting fees would substantially scale up the EFP fees by 43-132%. To recognize the potential benefits of EFPs to the state (increased quantity and quality of data, inclusion of fisher's knowledge in science and management, and improved fisheries management), the Commission and the Department would absorb all costs above the minimum estimate. Overall, for annual permit fees, the minimum recovery is about half of the high recovery estimate (see the last row in Tables 2-4).

Table 1: Summary of annual permit fees based on minimum, mid and high (approaching full) program cost recovery. Mid- and high- cost recovery estimates were considered but rejected.

Cost Recovery	Permit Tier 1	Permit Tier 2	Permit Tier 3	Permit Tier 4
Minimum	\$450.50	\$1,063.50	\$4,271.00	\$9,786.50
Mid	\$680.35	\$1,523.00	\$7,095.50	\$14,679.50
High	\$910.25	\$1,982.50	\$9,919.75	\$19,572.25

Table 2. Minimum Cost Recovery: Annual Permit Fee Tiers 1-4 (Proposed)

Classification	Program ¹	Rate ²	Tier 1 Hours	Tier 1 Total	Tier 2 Hours	Tier 2 Total	Tier 3 Hours	Tier 3 Total	Tier 4 Hours	Tier 4 Total
Environmental Scientist - Range C	MR	\$61.62	5	\$308.10	13	\$801.06	26	\$1,602.12	98	\$6,038.76
Sr. Environmental Scientist, Supervisor	MR	\$96.42	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
Environmental Program Manager	MR	\$111.49	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
Fish and Game Warden – Range B	LED	\$60.62	5	\$0.00 ³	5	\$0.00 ³	5	\$303.10	5	\$303.10
Fish and Game Lieutenant, Supervisor	LED	\$80.68	5	\$0.00 ³	5	\$0.00 ³	5	\$403.40	5	\$403.40
Fish and Game Captain	LED	\$92.49	1	\$0.00 ³	1	\$0.00 ³	1	\$92.49	1	\$92.49
Large vessel	LED	\$196.00	5	\$0.00 ³	5	\$0.00 ³	5	\$980.00	5	\$980.00
Associate Governmental Program Analyst	LRB	\$53.77	1	\$0.00 ³	1	\$0.00 ³	1	\$0.00 ³	1	\$0.00 ³
MR subtotal	-	-	5	\$308.10	13	\$801.06	26	\$1,602.12	98	\$6,038.76
LED subtotal	-	-	0	\$0.00	0	\$0.00	16	\$1,778.99	16	\$1,778.99
-	-	-	-	-	-	-	-	-	-	-
Subtotal ³	-	-	5	\$308.10	13	\$801.06	42	\$3,381.11	114	\$7,817.75
Overhead	-	24.32%	-	\$74.93	-	\$194.82	-	\$822.29	-	\$1,901.28
ALDS IT Support ⁴	-	-	-	\$67.50	-	\$67.50	-	\$67.50	-	\$67.50
Grand total	-	-	-	\$450.53	-	\$1,063.38	-	\$4,270.90	-	\$9,786.53
Rounded to nearest .25 per FGC 713	-	-	-	\$450.50	-	\$1,063.50	-	\$4,271.00	-	\$9,786.50

1. Program abbreviation: ALDS IT= Automated License Data System Information Technology; LED= Law Enforcement Division; LRB = License and Revenue Branch, MR= Marine Region, FGC = Fish and Game Commission
2. Rate equals median hourly wage with benefits (60.960% for Peace Officers and 52.734% for Non-Peace Officers) by employee classification, or percentage of overhead.
3. Excludes LRB's costs associated with Associate Governmental Program Analyst classification as intake and processing of fees and permit issuance are routine services provided by the Department LRB all EFP tiers; excludes LED personnel and vessel costs for Tier 1 and Tier 2 EFPs only.

4. See Table 2 of the ISOR for a detailed cost breakdown of tasks related to ALDS IT support.

Cost-sharing by the Department will occur in the form of in-kind services, including permanent staff and vessel time beyond the minimum hours estimated for cost-recovery and other non-permanent staff time (e.g., Scientific Aids).

The estimated costs do not include any applicable license buyer surcharge.

Sources: CalHR California State Civil Service Pay Scales by Classification (updated 1/20/2021); CDFW Budgets Branch for Staff Benefit Rates 2020/21 and Departmental Overhead Rates 2020/21.

Table 3. Mid-level Cost Recovery: Annual Permit Fee Tiers 1-4 (Considered but Rejected)

Classification	Program ¹	Rate ²	Tier 1 Hours	Tier 1 Total	Tier 2 Hours	Tier 2 Total	Tier 3 Hours	Tier 3 Total	Tier 4 Hours	Tier 4 Total
Environmental Scientist - Range C	MR	\$61.62	8	\$492.96	19	\$1,170.78	34	\$2,095.08	133	\$8,195.46
Sr. Environmental Scientist, Supervisor	MR	\$96.42	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
Environmental Program Manager	MR	\$111.49	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
Fish and Game Warden – Range B	LED	\$60.62	5	\$0.00 ³	5	\$0.00 ³	10	\$606.20	10	\$606.20
Fish and Game Lieutenant, Supervisor	LED	\$80.68	5	\$0.00 ³	5	\$0.00 ³	10	\$806.80	10	\$806.80
Fish and Game Captain	LED	\$92.49	1	\$0.00 ³	1	\$0.00 ³	2	\$184.98	2	\$184.98
Large vessel	LED	\$196.00	5	\$0.00 ³	5	\$0.00 ³	10	\$1,960.00	10	\$1,960.00
Associate Governmental Program Analyst*	LRB	\$53.77	1	\$0.00 ³	1	\$0.00 ³	1	\$0.00 ³	1	\$0.00 ³
MR subtotal	-	-	8	\$492.96	19	\$1,170.78	34	\$2,095.08	133	\$8,195.46
LED subtotal	-	-	0	\$0.00	0	\$0.00	32	\$3,557.98	32	\$3,557.98
-	-	-	-	-	-	-	-	-	-	-
Subtotal ³	-	-	8	\$492.96	19	\$1,170.78	66	\$5,653.06	165	\$11,753.44
Overhead	-	24.32%	-	\$119.89	-	\$284.73	-	\$1,374.82	-	\$2,858.44
ALDS IT Support ⁴	-	-	-	\$67.50	-	\$67.50	-	\$67.50	-	\$67.50
Grand total	-	-	-	\$680.35	-	\$1,523.01	-	\$7,095.38	-	\$14,679.38
% Increase from Minimum				51%		43%		66%		50%

Table 4. High Cost Recovery (approaching full): Annual Permit Fee Tiers 1-4 (Considered but Rejected)

Classification	Program ¹	Rate ²	Tier 1 Hours	Tier 1 Total	Tier 2 Hours	Tier 2 Total	Tier 3 Hours	Tier 3 Total	Tier 4 Hours	Tier 4 Total
Environmental Scientist - Range C	MR	\$61.62	11	\$677.82	25	\$1,540.50	42	\$2,588.04	168	\$10,352.16
Sr. Environmental Scientist, Supervisor	MR	\$96.42	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
Environmental Program Manager	MR	\$111.49	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00
Fish and Game Warden – Range B	LED	\$60.62	5	\$0.00 ³	5	\$0.00 ³	15	\$909.30	15	\$909.30
Fish and Game Lieutenant, Supervisor	LED	\$80.68	5	\$0.00 ³	5	\$0.00 ³	15	\$1,210.20	15	\$1,210.20
Fish and Game Captain	LED	\$92.49	1	\$0.00 ³	1	\$0.00 ³	3	\$277.47	3	\$277.47
Large vessel	LED	\$196.00	5	\$0.00 ³	5	\$0.00 ³	15	\$2,940.00	15	\$2,940.00
Associate Governmental Program Analyst*	LRB	\$53.77	1	\$0.00 ³	1	\$0.00 ³	1	\$0.00 ³	1	\$0.00 ³
MR subtotal	-	-	11	\$677.82	25	\$1,540.50	42	\$2,588.04	168	\$10,352.16
LED subtotal	-	-	0	\$0.00	0	\$0.00	48	\$5,336.97	48	\$5,336.97
-	-	-	-	-	-	-	-	-	-	-
Subtotal ³	-	-	11	\$677.82	\$25.00	\$1,540.50	\$90.00	\$7,925.01	\$216.00	\$15,689.13
Overhead	-	24.32%	-	\$164.85	-	\$374.65	-	\$1,927.36	-	\$3,815.60
ALDS IT Support ⁴	-	-	-	\$67.50	-	\$67.50	-	\$67.50	-	\$67.50
Grand total	-	-	-	\$910.17	-	\$1,982.65	-	\$9,919.87	-	\$19,572.23
% Increase from Minimum	-	-	-	102%	-	86%	-	132%	-	100%

In addition to the annual permit fees, the Department also evaluated a “high” (approaching full) cost recovery analysis for select other fees. The initial permit issuance fee aims to recover costs relating to review of the application for content, development of special conditions, preparing Department recommendations for the Commission, as well as reviewing fishing records of applicants, processing payment, preparing and distributing public notices, and preparing recommendations from Commission staff for Commissioner consideration (Table 5). The minimum cost recovery permit issuance fee is about 87% lower than the high cost recovery issuance fee.

Table 5. Initial Permit Issuance Fee Minimum (Proposed) vs. High (Considered but Rejected)

Classification	Program ¹	Rate ²	Minimum Hours	Minimum Total	High Hours	High Total
Environmental Scientist - Range C	MR	\$61.62	4	\$246.48	14	\$862.68
Sr. Environmental Scientist, Supervisor	MR	\$96.42	1	\$96.42	1	\$96.42
Environmental Program Manager	MR	\$111.49	0.5	\$55.75	0.5	\$55.75
Fish and Game Warden – Range B	LED	\$60.62	0	\$0.00	0	\$0.00
Fish and Game Lieutenant, Supervisor	LED	\$80.68	0	\$0.00	0	\$0.00
Fish and Game Captain	LED	\$92.49	2	\$184.98	2	\$184.98
Associate Governmental Program Analyst	FGC	\$53.77	1	\$53.77	1	\$53.77
Environmental Scientist (Specialist)	FGC	\$70.93	1	\$70.93	1	\$70.93
-	MR	subtotal	5.5	\$398.65	15.5	\$1,014.85
-	LED	subtotal	2	\$184.98	2	\$184.98
-	FGC	subtotal	2	\$124.70	2	\$124.70
Subtotal	-	--	9.5	\$708.33	19.5	\$1,324.53
Overhead	-	24.32%	--	\$172.27	--	\$322.13
Total	-	-	7.5	\$880.60	17.5	\$1,646.66
Rounded to nearest .25 per FGC 713	-	-		\$880.50		\$1,646.75

% Increase from Minimum

87%

1. Program abbreviation: ALDS IT= Automated License Data System Information Technology; LED= Law Enforcement Division; LRB = License and Revenue Branch, MR= Marine Region, FGC = Fish and Game Commission
2. Rate equals median hourly wage with benefits (60.960% for Peace Officers and 52.734% for Non-Peace Officers) by employee classification, or percentage of overhead

Sources: CalHR California State Civil Service Pay Scales by Classification (updated 1/20/2021); CDFW Budgets Branch for Staff Benefit Rates 2020/21 and Departmental Overhead Rates 2020/21.

The permit application fee aims to recover costs relating to review of an application for completeness (Table 6). The minimum cost recovery permit application fee is about 50% lower than the high cost recovery application fee.

Table 6. Permit Application Fee Minimum (Proposed) vs. High (Considered but Rejected)

Classification	Program ¹	Rate ²	Minimum Hours	Minimum Total	High Hours	High Total
Environmental Scientist - Range C	MR	\$61.62	2	\$123.24	3	\$184.86
-	-	-	-	-	-	-
Subtotal	-	-	-	\$123.24	-	\$184.86
Overhead	-	24.32%	-	\$29.97	-	\$44.96
Total	-	-	2	\$153.21	3	\$229.82
Rounded to nearest .25 per FGC 713	-	-	-	\$153.25	-	\$229.75

% Increase from Minimum

50%

1. Program abbreviation: MR= Marine Region
2. Rate equals median hourly wage with benefits (60.960% for Peace Officers and 52.734% for Non-Peace Officers) by employee classification, or percentage of overhead

Sources: CalHR California State Civil Service Pay Scales by Classification (updated 1/20/2021); CDFW Budgets Branch for Staff Benefit Rates 2020/21 and Departmental Overhead Rates 2020/21.