

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

Add Division 1, Subdivision 1, Chapter 5.5, Article 7, Section 56.00 & 56.01;
Amend Sections 120, 120.1, and 705
Title 14, California Code of Regulations

RE: California Pink (Ocean) Shrimp, *Pandalus jordani*,
Fishery Management Plan Implementing Regulations and Form DFW 1419

I. Dates of Statements of Reasons

- (a) Initial Statement of Reasons Date: December 23, 2021
- (b) Final Statement of Reasons Date: October 25, 2022

II. Dates and Locations of Scheduled Hearings

- (a) Notice Hearing
Date: February 16, 2022 Location: Virtual Meeting
- (b) Adoption Hearing
Date: June 15, 2022 Locations: Los Angeles and Trinidad

III. Update

At its June 15, 2022 meeting, the Fish and Game Commission (Commission) adopted the implementing regulations for the Pink Shrimp Fishery Management Plan (FMP; adopted April 20, 2022). The regulations, as provided in an Initial Statement of Reasons dated December 23, 2021, allows the state to take a more active management approach and align management of the California pink shrimp fishery with Oregon and Washington. The regulations implement a Harvest Control Rule (HCR) for the California pink shrimp fishery that is utilized by both Oregon and Washington. The regulations also require the use of Footrope Lighting Devices (FLD) to reduce eulachon bycatch. The regulations would further clarify how pink shrimp landings would be estimated when mixed with ice based on established norm. This methodology is necessary for reporting the actual weight of pink shrimp landed. The regulations would also clarify that trawling for shrimp is prohibited in state waters.

The proposal in part adds new sections 56.00 and 56.01 to Title 14, California Code of regulations. While the substantive languages of the sections were underlined to denote that they are newly added sections, the two respective “Note: Authority and Refence” sections were not; these sections are now properly underlined. The Authority and Reference sections serve a purely administrative purpose and applying the underline does not materially change the regulations. There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

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

Several comments were made in support of the adoption of the FMP, which have been provided in the FMP under Appendix D. No comment has been made directly on the proposed regulations.

V. Location and Index of Rulemaking File

A rulemaking file with attached file index is maintained at

California Fish and Game Commission
715 P Street,
Sacramento, CA 95814

VI. Location of Department Files

Department of Fish and Wildlife
715 P Street,
Sacramento, CA 95814

VII. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

A more restrictive HCR was considered by the Department of Fish and Wildlife (Department); however, it is inconsistent with the goal of establishing a more cohesive west coastwide management structure for pink shrimp. This alternative would increase the landing thresholds for both target and limit reference points by 2,500 lb., (to 12,500 lb. and 15,000 lb., respectively). The decision to adopt the HCR and the FLD requirements is in large part driven by a need for uniformity across the states on the U.S. west coast. A more restrictive HCR would deviate from this goal and may drive fishery participants to make the longer trip to southern Oregon ports and avoid landing pink shrimp in California ports.

An alternative to the prescribed landing weight estimation protocol was considered where processors would submit their sampling plans for Department approval on a case-by-case basis. However, the enforceability of such a framework was found to be impractical, and the concept was not adopted.

No other alternatives to a regulatory change 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. The Department would continue to manage pink shrimp without a management plan under the current regulations and forgo the opportunity for more sustainable management under an FMP (e.g., HRC and FLD requirement) in contrast with the vision laid out in Marine Life Management Act (Fish & Game Code §§ 7060 *et seq.*). This alternative would also hinder potential economic benefits and opportunities that could be attained through Marine Stewardship Council (MSC) certification.

(c) Consideration of Alternatives

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

(d) Description of Reasonable Alternatives that Would Lessen Adverse Impact on Small Business

In view of information currently possessed, no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to small businesses than the adopted regulation.

VIII. Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action is expected to augment California competitiveness by bringing landings to ports in California in conjunction with MSC certification.

(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 anticipates positive impacts on the creation of jobs, the creation of new business, and the expansion of businesses related to California pink shrimp commercial fishing activity in California. The Commission does not anticipate any impacts on the elimination of jobs or the elimination of existing businesses. The Commission does not anticipate any benefits to the health and welfare of California residents or worker safety. Benefits to the state's environment are anticipated through a more sustainable pink shrimp fishery and through the reduction of bycatch, particularly of federally threatened eulachon.

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

The proposed FLD lighting requirement on trawl lines is estimated to cost pink shrimp trawlers an estimated \$275 initially and \$175 in ongoing annual maintenance costs.

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

The Commission anticipates that there will be costs to the state, specifically the Department. Program implementation costs are estimated to be \$24,119 per fiscal year. These additional costs will be absorbed within existing Department budgets. No effects on federal funding to the state are anticipated.

(e) Nondiscretionary Costs/Savings to Local Agencies

None

(f) Programs Mandated on Local Agencies or School Districts

None

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code

None

(h) Effect on Housing Costs

UPDATE

The Commission is incorporating two documents by reference in this rulemaking, the April 2022 Pink (Ocean) Shrimp, *Pandalus jordani*, Fishery Management Plan and the Northern Pink Shrimp Trawl Vessel Permit Transfer Application DFW 1419 (NEW 09/01/22). Both documents were available from the Commission upon request during this rulemaking. It would be cumbersome and impractical to publish these documents in the CCR.

It is necessary for the health and safety of the people of the state that the reporting requirements created in these regulations apply to businesses.

None

Updated 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), and all references to the pink shrimp (*Pandalus jordani*) fishery refer to the commercial pink shrimp fishery.

This proposal would implement the California Pink (Ocean) Shrimp, *Pandalus jordani*, Fishery Management Plan (FMP). The effort to develop and implement this FMP began in 2017, and the adoption of the FMP by the California Fish and Game Commission (Commission) is expected in April 2022. The purpose of the FMP and its implementing regulation is to update the management of California's pink shrimp fishery to be in line with Oregon and Washington. Updating the fishery's management would also assist the fishery in obtaining the Marine Stewardship Council (MSC) certification. This effort is expected to result in a more sustainable and less environmentally impactful fishery.

This regulatory proposal will add Article 7, sections 56.00 and 56.01 and amends sections 120 and 120.1 to implement the FMP. The proposal will add a set of reference points that is part of a Harvest Control Rule (HCR) originally developed by scientists from the Oregon Department of Fish and Wildlife (ODFW) and adapted for use in California. In addition, the proposal will also add a Footrope Light Device (FLD) requirement to reduce bycatch of the threatened southern distinct population segment of eulachon (*Thaleichthys pacificus*). This proposal will make the following amendments:

- Adding section 56.00 to describe the adoption of the FMP, its consistency with the Marine Life Management Act, and the Fish and Game Code subsection, subsection 8842(b), would be made inoperative as it applies to the pink shrimp fishery.
- Adding section 56.01 to clarify the role of the FMP and to incorporate it into regulation by reference.
- Amend subsection 120(b) to clarify that pink shrimp trawling is prohibited within state waters except as permitted by the commission.
- Adding subsections 120.1(b)(1)-(4), pink shrimp may be taken April 1 through October 31, except when the stock is deemed vulnerable under the HCR.
- Add a new subsection 120.1(c)(2), which will require pink shrimp trawl vessels operating north of Point Conception, Santa Barbara County to use FLDs.
- Amend subsection 120.1(e) to improve the clarity and enforceability of the rule requiring minimum count of 160 shrimp per pound.
- Add new subsections 120.1(f)(1)-(4) which stipulates how businesses must estimate the weight of pink shrimp landings when landed mixed with ice; this is necessary to ensure consistent estimation and reporting of the accurate weight of pink shrimp landed as required by section 197.

- Updating form FG 1419 (Rev. 5/13), the Northern Pink Shrimp Trawl Vessel Permit Transfer Application, to DFW 1419 (New 01/01/22) as incorporated by reference in Section 705.

Benefit of the Regulations:

The proposal would ensure the long-term sustainability and viability of the pink shrimp fishery in accordance with the objectives of the Marine Life Management Act through the precautionary measures implemented by the HCR. The proposed FLD requirement is expected to greatly reduce eulachon bycatch. These requirements are already required in Oregon and Washington; implementing the requirements in California will bring the state's pink shrimp management in line with that of Oregon and Washington. Bringing California's pink shrimp management in line with other states will also facilitate the fishery's effort to obtain MSC certification. Another added benefit if California's pink shrimp fishery obtains MSC certification is a reduced need for shrimp caught off northern California waters to be landed in southern Oregon ports, thus supporting the return of landings to California ports and reduce fuel consumption for many vessels and greenhouse gas emissions. Updating FG 1419 to DFW 1419 would modernize the form and improve processing.

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 adopt the implementing regulation of an FMP (FGC section 7078). No other state agency has the authority to adopt FMP implementing 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 adoption of FMP implementing regulations; therefore, the Commission has concluded that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

UPDATE

At its June 15, 2022 meeting, the Commission adopted regulations as set forth in the Initial Statement of Reasons dated December 23, 2021. The adopted regulations would implement an HCR, an FLD requirement, a new landings process requirement, and a clarification on prohibition against shrimp trawling within state waters. Underlining has been applied to the "Note: Authority and Reference" sections of the two new regulatory sections (56.00 and 56.01). The sections serve a purely administrative function, and the addition of the underlining has no material effect on the regulation. There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

On October 12, 2022, the California Fish and Game Commission (Commission) approved the following revisions to the regulatory text and forms:

- I. **DFW 1419 (New 09/01/22)**

Repeal the adopted “Northern Pink Shrimp Trawl Vessel Permit Transfer Application DFW 1419 (New 01/01/22)” and replace with a newer version: “Northern Pink Shrimp Trawl Vessel Permit Transfer Application DFW 1419 (New 09/01/22)”. DFW 1419 (New 09/01/22) is modified to clarify the distinct responsibilities between the current and new owner permit holders. A privacy notice is also added to ensure consistency with the *Information Practices Act*.

II. Pink Ocean Shrimp Fishery Management Plan (FMP)

- i. Incorporate by reference the pink shrimp FMP that was published and adopted by the Commission in April 2022. This is necessary because the draft pink shrimp FMP, published November 2021, was the document available to the public at the time the subject rulemaking was noticed in March 2022.
- ii. Modify proposed Section 56.01 language clarify that only the pink shrimp FMP (April 2022), not any other applicable state and federal laws and regulations, is incorporated by reference.

Minor editorial changes are also proposed to clarify and simplify the regulations. There have been no other changes to other laws or regulations