

STAFF SUMMARY FOR DECEMBER 12-13, 2018

11. BOX CRAB EXPERIMENTAL GEAR PERMIT**Today's Item****Information** ☐**Action** ☒

Receive and consider approving requests for box crab experimental gear permits (EGPs) for participation in DFW's box crab EGP program.

Summary of Previous/Future Actions

- | | |
|---|-----------------------------------|
| • Approved MRC recommendation for incidental take limits rulemaking and EGP program | Dec 6-7, 2017; San Diego |
| • MRC update on EGP program | Jul 17, 2018; MRC, San Clemente |
| • Received draft EGP criteria and conditions | Oct 17, 2018; Fresno |
| • Today consider approving EGP requests | Dec 12-13, 2018; Oceanside |

Background

Pursuant to Fish and Game Code Section 8606 governing development of commercial fishing gear, FGC has authority to approve EGPs, to be issued by DFW. The Commission may approve issuance of EGPs for the purpose of authorizing new types of commercial fishing gear and authorizing new methods of using existing commercial fishing gear. Permits are subject to any conditions FGC deems necessary to ensure proper utilization and protection of marine resources, and to minimize user group and resource allocation conflicts.

Since late 2017, DFW has been developing a collaborative research program designed to study brown box crab through FGC-approved EGPs that would be issued to commercial trap fishermen who are willing to meet conditions necessary for the project. See exhibits 1 and 2 for detailed background. The research will explore using existing fishing gear in a new way. The collaborative research program would support emerging fisheries, as mandated by the Marine Life Management act, by providing the necessary information to determine if the box crab resource represents a viable new fishing opportunity. If FGC approves the issuance of EGPs, the collaborative research program would permit fishermen to target box crabs through the use of existing commercial fishing gears used according to new methods.

At the Oct 2018 FGC meeting, DFW presented an overview of the research design and costs, and proposed EGP participation criteria and permit conditions, which were vetted in two meetings with interestested industry members and with MRC (Exhibit 3). Based on funding secured by DFW to offset costs of electronic monitoring equipment and program participation, DFW recommended that eight EGPs be issued. To avoid spatial concentration of fishing effort, DFW proposed that the eight permits be distributed according to fishing study regions with three permits issued to fishermen operating north of Point Conception, and five permits issued to fishermen operating south of Point Conception into one or more sub-regions.

Following the Oct 2018 FGC meeting, commercial trap fishermen interested in a box crab EGP, and willing to meet research requirements, permit terms and conditions, and cost-sharing needs, were asked to submit requests to FGC and specify their desired fishing region. Fishermen were also informed that if more than eight requests were received, that a drawing may be necessary to assign an order of consideration for the eight funded EGPs.

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FGC received written requests from 15 commercial trap fishermen (Exhibit 4) and forwarded the requests to DFW for review. Of these fishermen, 3 wish to fish north and 12 wish to fish south of Point Conception. DFG found that all 15 fishermen would be capable of operating under the proposed EGP due to the following: (1) possession of a valid invertebrate trap fishery permit, (2) agreeing to all draft permit terms and conditions, and (3) possession of a vessel with the capability to carry an observer (Exhibit 5).

Significant Public Comments (N/A)

Recommendation

FGC staff: Approve allocating three EGPs to the area north of Point Conception; approve allocating five EGPs to the area south of Point Conception; determine what permit conditions to include in each EGP. Direct staff to identify the fishermen who would receive the permits using a list of names from a drawing establishing the order for consideration, to be conducted immediately after the Commission recesses on the first day of its Dec 12-13, 2018 meeting:

- (1) Approve EGPs for the three applicants requesting to fish in areas north of Point Conception and the first five in the established order that requested to fish south of Point Conception, to (a) be issued sequentially in the order drawn for the south, (b) become effective for 12 months upon Apr 1, 2018 and receipt of cost-share as specified, and (c) be renewed annually for up to three years upon receipt of annual cost-share payment.
- (2) Approve EGPs for the remaining applicants, to be issued sequentially in the order drawn and in the region for which they applied, that would only become active when either: (a) a newly funded EGP in that region opens, or (b) a permittee declines to participate or withdraws voluntarily or involuntarily, thereby opening a funded EGP.
- (3) All applicant names will be drawn and the order of selection recorded. If a selected participant declines, fails to submit cost-sharing funds, does not agree to and abide by all permit terms and conditions, withdraws, or is removed during the permit term, the permit will be offered to the next potential participant in order drawn. If a future fishery is developed, access to or preferential treatment regarding future permits of any type is not implied by participation in the EGP program.

DFW: See Exhibit 5 for DFW recommendations.

Exhibits

1. Staff summary for Agenda Item 11, Jun 20-21, 2018 FGC meeting (for background only)
2. Staff summary for Agenda Item 12, Oct 17, 2018 FGC meeting (for background only)
3. DFW presentation from Oct 17, 2018 FGC meeting
4. Table of fishermen who submitted EGP statements of interest
5. DFW memo, list of applicants, and draft EGP permit, received Dec 6, 2018
6. DFW memo and draft notice of exemption, received Dec 6, 2018

STAFF SUMMARY FOR DECEMBER 12-13, 2018

Motion/Direction

Moved by _____ and seconded by _____ that the Commission determines that the project is exempt from CEQA as being categorically exempt and approves the staff recommendations for the box crab experimental gear permits, and approves the proposed terms and conditions as discussed today.

STAFF SUMMARY FOR JUNE 20-21, 2018

11. COMMERCIAL NON-CANCER CRAB INCIDENTAL TAKE ALLOWANCES**Today's Item****Information** ☐**Action** ☒

Authorization to publish notice of intent to adopt regulations for the incidental take of crabs not in the genus *Cancer* in commercial trap fisheries.

Summary of Previous/Future Actions

- | | |
|--|------------------------------------|
| • Approved MRC recommendation for rulemaking | Dec 6-7, 2017; San Diego |
| • Today's notice hearing | Jun 20-21, 2018; Sacramento |
| • Adoption hearing | Oct 17-18, 2018; Fresno |

Background

In recent years, DFW has documented increased landings of species of non-Cancer crab, or crabs not in the genus *Cancer* (including brown box crab and California king crab), with an all-time high in 2016. Under current laws, incidental take of non-Cancer crabs is permitted in the target trap fisheries for rock crab, Dungeness crab, and lobster, with no limit on amount. In Apr 2018, DFW determined that the harvest of non-Cancer crabs is an emerging fishery and, under the Marine Life Management Act, DFW must recommend management measures for FGC's consideration to ensure sustainability (Exhibit 1).

Proposed Regulations

Existing regulations in Section 126, governing the commercial harvest of Tanner crab, another non-Cancer crab, would be moved to Section 126.1. New Section 126, would govern the commercial take of non-Cancer crabs in trap gear and would define Cancer crabs, create landing limits for non-Cancer crabs taken incidental to other targeted species in trap gear, and require all crabs be landed prior to use as bait. Possession and landing of species in the Lithodidae family (box and king crabs) would be limited to no more than 25 pounds per species. Sheep crab would be subject to a total allowable catch (TAC) of 95,000 pounds annually. The proposed limits for box and king crab are designed to slow current harvest rates while research is conducted on these species, and to allow development of an experimental gear permit for box crab to investigate the potential for a targeted fishery. The proposed total allowable catch (TAC) for sheep crab is intended to maintain the current harvest level, which has been stable for over 30 years, and prevent potential, future, unsustainable incidental harvest.

Significant Public Comments

San Diego nearshore trap fishermen oppose the landing of sheep crab used as bait (Exhibit 6).

Recommendation

FGC staff: Authorize publication of the notice as recommended by DFW.

DFW: Authorize publication of the notice as detailed in the draft initial statement of reasons (ISOR; Exhibit 3) to limit incidental take of non-Cancer crab.

STAFF SUMMARY FOR JUNE 20-21, 2018

Exhibits

1. DFW memo designating non-Cancer crab as emerging fishery, received Apr 6, 2018
2. DFW memo, received Jun 8, 2018
3. Draft ISOR
4. Draft notice of exemption
5. DFW presentation
6. Draft economic and fiscal impact statement with attachment
7. Emails from John E. Law providing a letter from San Diego nearshore trap fishermen regarding the landing of sheep crab used as bait, received Jun 3 and 4, 2018

Motion/Direction

Moved by _____ and seconded by _____ that the Commission authorizes publication of a notice of its intent to amend subsection 125.1(c)(3), amend Section 126, and add Section 126.1 related to incidental take of crabs not in the genus *Cancer* in commercial trap fisheries.

STAFF SUMMARY FOR OCTOBER 17, 2018

12. BOX CRAB EXPERIMENTAL GEAR PERMIT**Today's Item****Information** ☒**Action** ☐

Receive and discuss proposed box crab experimental gear permit (EGP) program, participation criteria, and permit conditions.

Summary of Previous/Future Actions

- | | |
|--|---------------------------------|
| • MRC discussed box and king crab landings increase | Nov 9, 2017; MRC, Marina |
| • FGC approved MRC recommendation for incidental take limits and EGP program | Dec 6-7, 2017; San Diego |
| • Notice hearing for incidental take limits | Jun 20-21, 2018; Sacramento |
| • MRC update on EGP program | Jul 17, 2018; MRC, San Clemente |
| • Today's proposed EGP criteria and conditions | Oct 17, 2018; Fresno |
| • Consider approving EGP applications | Dec 12-13, 2018; Oceanside |

Background

In 2017, DFW notified FGC of a rapid increase in landings of box crab and California king crab from different gear types in response to developing market demands. While California Fish and Game Code Section 8284 specifically authorizes incidental take of several marine invertebrates incidental to other target fisheries—such as in the rock crab trap fishery, where incidental take of Kellet's whelk, octopus, and crabs other than of the genus *Cancer* is allowed—no limit on the amount of take is specified.

In addition, several fishermen contacted FGC with requests to authorize targeting the species authorized in Section 8284, either through a regulation change or through an experimental fishery via EGPs. However, little biological information is available about the species or sustainable harvest levels. In Aug 2017, FGC referred the requests to DFW and MRC for review.

Based on presentations and discussion at the Nov 2017 MRC meeting, MRC recommended, and FGC approved, a two-pronged approach in response to the biological concerns and industry interest: setting incidental take limits and developing research plans. The first part, which establishes conservative incidental take commercial trip limits for *Lithodidate* crabs (including box crab and California king crab) and for all other non-*Cancer* crab species (except Tanner crab), is being accomplished through a rulemaking scheduled for adoption at this meeting (see Agenda Item 7). For future research, DFW has been developing an EGP-based collaborative research program to be conducted with commercial trap fishermen willing to meet conditions necessary for the project. DFW has held two meetings with interested industry members to share ideas and get feedback: in May to introduce general project and research design, and in Sep to clarify participation criteria, potential catch allocations, and cost-sharing, including participant contribution. DFW has sought funding sources to offset costs of electronic monitoring equipment and participation in the program.

STAFF SUMMARY FOR OCTOBER 17, 2018

Today, DFW will present an update on the research design, proposed number of EGP participants, EGP participation criteria and permit conditions, and costs (Exhibit 1). Following this meeting, commercial trappers interested in a box crab EGP under defined conditions and cost are asked to submit requests to FGC. DFW, including its Law Enforcement Division, will review the requests and provide recommendations for FGC approval of EGPs in Dec.

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

FGC staff: Supports DFW recommendation.

DFW: Provide any feedback on the criteria and/or fee for participation in the EGP program, and set a deadline of Nov 1 for interested fishermen to submit an EGP request to FGC, which would provide sufficient time for review by DFW enforcement prior to the Dec FGC meeting.

Exhibits

1. DFW presentation

Motion/Direction (N/A)

Box Crab Experimental Gear Permit Terms & Conditions, Permit Distribution

**Dr. Julia Coates, Environmental Scientist
Fish & Game Commission, Fresno, October 17, 2018**



Andrew Lauermann, Marine Applied Research & Exploration

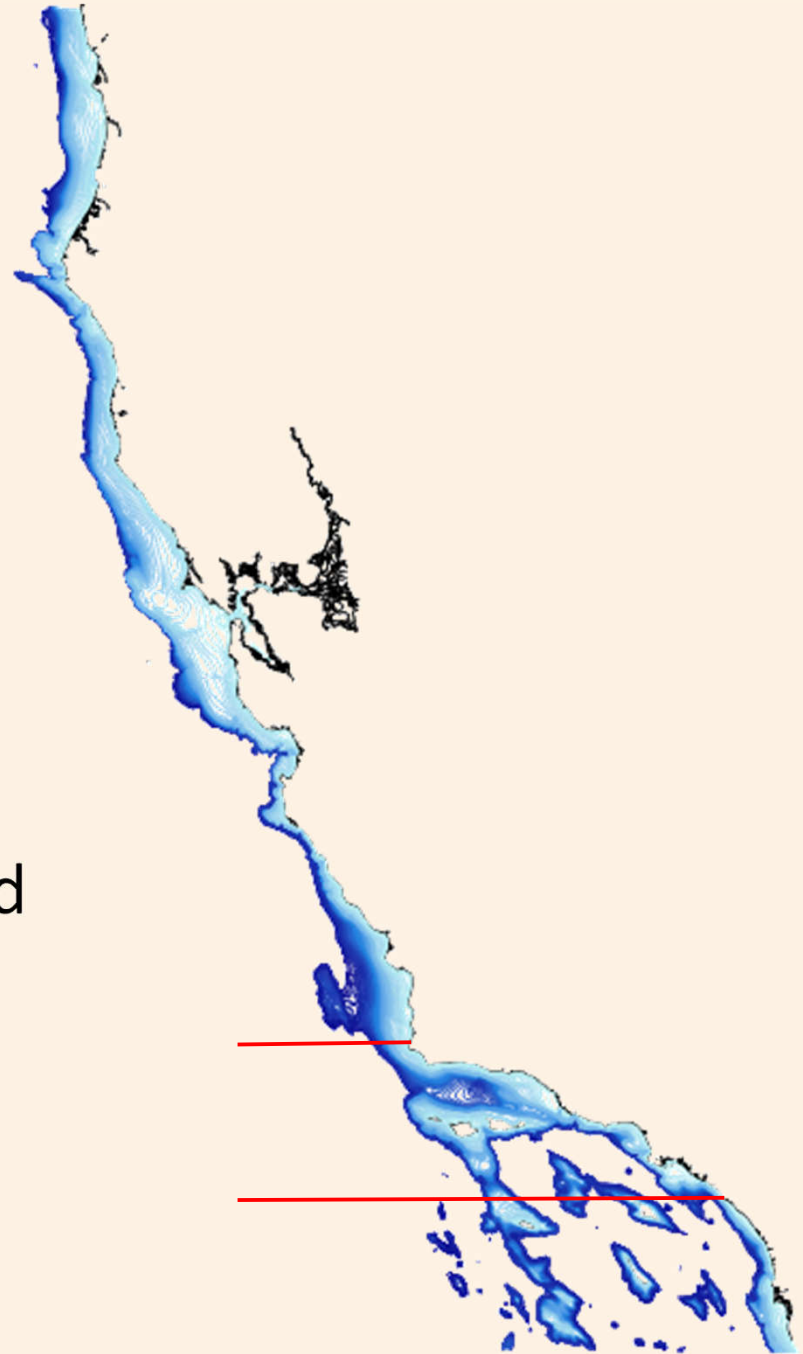
History & Progress

- Landings increases began 2014
- MRC discussions November 2017 & July 2018
- CDFW Director designated all non-Cancer crabs an emerging fishery April 2018
- Constituent meetings April & September 2018
- Regulation change to limit incidental take
 - Notice June 2018
 - Adoption today
- Development status:
 - Terms & conditions, research, timeline



Proposed Permits

- 8 Permits Total
 - 3 north of Pt Conception
 - 5 south of Pt Conception
- Southern permits distributed across 2-3 regions



Recommended Terms & Conditions

- Observer coverage and installation of electronic monitoring equipment
- Permits valid for 1 year with up to 4 renewals
- Permits associated with vessel with ≤ 2 operators
- Permit fee
- Allowances, with restrictions, for multiple fisheries / trip
- Annual catch limit of 36,000 lbs/permit
- Size limit $\geq 5 \frac{3}{4}$ in
- Service interval ≥ 96 hrs. Exceptions for weather or safety.
- Max 75 traps / permit. Possible additional allocations to meet research needs.



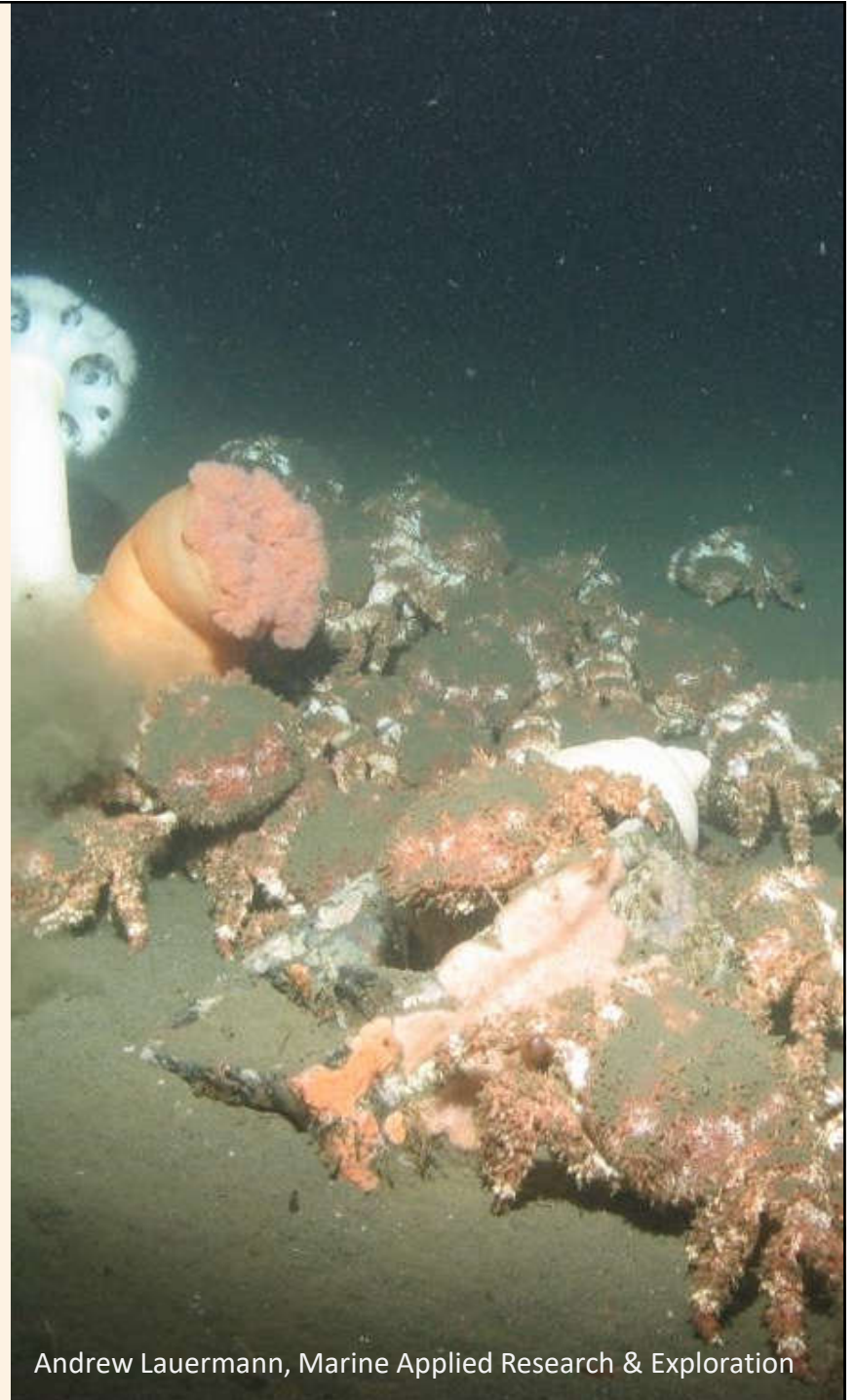
Terms & Conditions Cont.

- Trap design specifications
- Follow best practices for avoiding mammal & turtle entanglement
- Buoy marking requirements
- No pop-ups
- Cooperation with domoic acid testing
- Fishing off San Clemente & San Nicolas Islands may be restricted
- Minimum of 50 fishing days per year
- Participate in all requested research data collection activities



Catch Limit

- SoCal annual limit - 180,000 lbs
- Equal allocation of 36,000 lb for each of 5 SoCal permits
- Additional 36,000 lb for each central/northern permit
- Monthly limit is not required. Must accommodate experimental work & minimum of 50 fishing days.



Andrew Lauermann, Marine Applied Research & Exploration

Catch Limit Approach

- Consider high and low end points of two biomass estimation methods
- Set a conservative catch limit that allows for ~ 50% video review
- Limit may be adaptive in subsequent permit years



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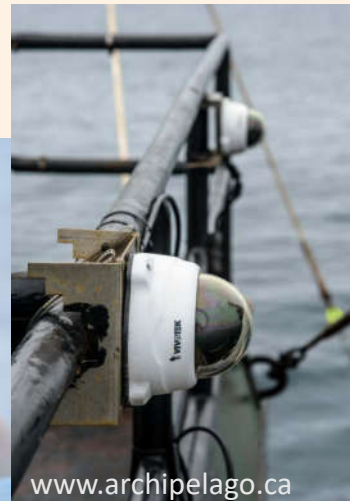
Research, Funding & Collaborations

- Electronic monitoring – Ocean Protection Council (OPC), Pacific States Marine Fisheries Commission (PSMFC)
- Fishing/trap surveys – Fishermen
- Tag-recapture – Sea Grant, NOAA Saltonstall-Kennedy
- Collections & laboratory – Sea Grant, NOAA Saltonstall-Kennedy



Electronic Monitoring

- No cost to fishermen, equipment to be returned to CDFW
- Goals
 - Bycatch
 - Catch (retained & discarded), size, sex
 - Develop automated image analysis software
 - Test two EM systems and human observers - provide guidance for potential broader implementation



Costs

2 years participation

CDFW	\$252,326
Enforcement, Marine Region, License & Revenue Branch, Research Materials, Travel/Meetings	
OPC / PSMFC	\$265,468
Electronic Monitoring Hardware, Salary/Time for Data Analysis, Travel/Meetings	
TOTAL	\$517,794



Costs & Permit Fee

CDFW	
Enforcement, Marine Region, License & Revenue Branch, Research Materials, Travel/Meetings	\$252,326
Subtract Marine Region Salary	- \$156,094
	\$96,232
Subtract contribution by Resource Legacy Fund	- \$25,000
	\$71,232
Divide by 8 permits per year for 2 years	\$4,452



Permit Issuance

- Recommended requirements
 - Current invertebrate trap fishery permit holder
 - Vessel capable of carrying an observer
 - Agree to terms & conditions
 - Satisfactory review of compliance history
- Permit distribution
 - Interested fishermen submit written request to FGC by Nov. 1
 - Qualifications assessed
 - Preferred fishing region to be considered
 - Fishermen to be notified by Dec. 1
 - Request approval of permits at Dec Commission meeting



Next Steps

- Submit permit requests to Commission at fgc@fgc.ca.gov
- Permits finalized at Commission meeting, Dec 12, Oceanside
- If not finalized in December, new statute applies
- Work with permittees to finalize research plans and specific fishing constraints
- Install electronic monitoring equipment and begin fishing early-mid 2019
- Contact: Julia.Coates@wildlife.ca.gov
805-730-1328



**CALIFORNIA FISH AND GAME COMMISSION
STATEMENTS OF INTEREST FOR
BOX CRAB EXPERIMENTAL GEAR PERMIT CONSIDERATION**

#	Name of Applicant	Port of Origin	Target Fishing Area (North or South of Point Conception	Specific Areas in Fishing Region	Corresponding DFW Fishing Study Region
1	Blue, William	Morro Bay	North	Pt Conception to Pt Sur	North of Point Conception
2	Marhsall, Donald	Half Moon Bay	North	Faralon Islands	North of Point Conception
3	Melz, Stephen	Half Moon Bay	North	Faralon Islands	North of Point Conception
4	Ellis, Ronald	Santa Barbara	South	Northern Channel Islands	Point Conception to Point Vicente
5	Grace, Devin	Santa Barbara	South	Northern Channel Islands, SB Coast	Point Conception to Point Vicente
6	Jones, Evan	Ventura	South	Northern Channel Islands, Hueneme Canyon	Point Conception to Point Vicente
7	Liso, Matthew	Santa Barbara	South	Northern Channel Islands, SB Coast, Outer Banks	Point Conception to Point Vicente
8	Lobo, Travis	Santa Barbara	South	Northern Channel Islands, SB Coast	Point Conception to Point Vicente
9	Olsen, Greg	Santa Barbara	South	Santa Barbara Channel, Santa Rosa Island	Point Conception to Point Vicente
10	Voss, Christopher	Santa Barbara	South	Northern Channel Islands	Point Conception to Point Vicente
11	Campbell, Bruce	Oceanside	South	San Clemente, Outer Banks, San Diego coast	South of Point Vicente
12	Major, Daniel	San Diego	South	Southern Channel Islands, Outer Banks	South of Point Vicente
13	Markoff, Christopher	San Diego	South	San Clemente, Outer Banks	South of Point Vicente
14	Slaughter, Shane	San Diego	South	San Nicolas, Outer Banks	South of Point Vicente
15	Voyatzis, Marcos	Newport Beach	South	San Nicolas, Santa Barbara Island, Outer Banks	South of Point Vicente

Draft Recommended Terms & Conditions (to be considered by the Fish and Game Commission)

- Observer coverage
 - Agree to installation of electronic monitoring equipment and access to data collected
 - Agree to and have a vessel capable of carrying human observers and scientists with accommodations equal to those provided to the crew
 - Must allow Department staff to board and observe vessels as requested
 - Current Coast Guard safety decal required
- Permits will be valid for 1 year upon Commission approval with up to 3 years of renewal. Permits may be revoked or modified by the Department at its sole discretion, upon 48-hour written notice to the permittees. Failure to adhere to the terms of the permit or violation of any laws while operating under the permit may result in immediate suspension or denial of renewal request of the box crab experimental gear permit at the discretion of the Department.
- Permits will be associated with a vessel with up to two operators. The primary operator shall be the holder of permits for additional fisheries prosecuted on that vessel and may designate one additional operator. One of the two operators must be present on the vessel during all box crab fishing or possession. Both operators are responsible for meeting permit terms & conditions. The permit must be kept aboard the vessel during all box crab fishing or possession.
- Permit fee (TBD pending evaluation of Department costs)
- Rock crab and Dungeness crab may be retained in box crab traps with appropriate permits for retained species and adherence to all other regulations regarding the take of these species. Participants may fish for box crab and rock crab, Dungeness crab or spot prawn within the same trip. Box crab and lobster may not be targeted within the same trip. King crab caught in box crab traps may be landed subject to Commission-determined limits. The Department will recommend king crab take to be allowed during specific experimental work with adherence to the 25 lb/trip limit during regular box crab fishing. All other species caught in box crab traps shall be returned to the water immediately and not used as bait.
- Annual catch limit of 36,000 lbs/permit
- Participate in all requested research data collection activities including but not limited to:
 - Intensive fishing within a designated area
 - Trap survey monitoring catch per unit effort with varying levels of trap spacing along strings
 - Tag-recapture study
 - Crab collections
 - Logbook data collection
- Only box crab equal to or above 5 ¾ in carapace width may be retained or possessed unless authorized by the Department to retain smaller crab for research purposes.
- Follow assigned service interval to be no less than 96 hours unless otherwise authorized by the Department. Exceptions made for weather or other safety concerns.

- Trap design should be within the following limits: dimensions no larger than 6x6 feet, two round escape ports no smaller than 4 inches in diameter, and mesh 1.5 inches or larger. Escape ports must be in the top or side of the trap. If both are in the side, at least one must be located so that at least one half of the opening is in the upper half of the trap. Traps must include destruct devices to be specified by the Department. The Department may allow and/or request deployment of specific trap designs for research purposes.
- Follow best practices for avoiding mammal & turtle entanglement to be provided by the Department.
- Floats must be marked with an "R" followed by the fisherman's L-number and a tag of Department designated shape & size to be provided by the permittee.
- No pop-ups
- Base allocation of traps is a maximum of 75 per permit. Additional traps may be allocated by the Department if necessary to meet research needs.
- Cooperation with domoic acid testing by providing samples when requested
- Fishing in waters off San Clemente and San Nicolas Islands may be restricted if Naval operations or other conflicts impede the progress of experimental work.
- Minimum of 50 fishing days per year unless permit sharing, or as specified by the Department.

State of California
Department of Fish and Wildlife

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION

2018 DEC -7 PM 12:05

M e m o r a n d u m

Date: December 3, 2018

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

From: Charlton H. Bonham
Director



Subject: Box Crab Experimental Gear Permit List of Applicants and Permit Terms and Conditions

As discussed at the October meeting of the California Fish and Game Commission (Commission), members of the commercial fishing fleet have expressed interest in targeting box crab. Since that meeting, fifteen fishermen submitted statements of interest to the Commission for consideration at the upcoming Commission meeting on December 12, 2018, in Oceanside. These statements indicate that the fishermen are interested in experimental gear permits under Fish and Game Code section 8606. A list of the applicants is attached.

A collaborative research program utilizing experimental gear permits will support emerging fisheries as required by the Marine Life Management Act. In conjunction with Commission staff and the fleet, the Department of Fish and Wildlife (Department) worked to develop a potential permitting methodology to address these applications and guide the Commission in its determination of whether or not it would be appropriate to approve the applications. Fish and Game Code section 8606 requires that any permit approved by the Commission be subject to the terms and conditions necessary to ensure the proper utilization and protection of marine resources, and to minimize user group and resource allocation conflicts. This permitting methodology would distribute fishing activity geographically via eight permits across the relevant fishing grounds to promote sustainability and minimize user conflict; the Department suggests that the Commission's decision reflect consideration of this potential permitting methodology.

Additionally, the Commission may wish to evaluate the following factors for each permittee: 1) possession of a current invertebrate trap fishery permit, 2) agreement to all draft permit terms and conditions, and 3) possession of a vessel with the capability to carry an observer. Each of these indicates that they have experience using trap gear and a vessel with the capacity to conduct the required research activities successfully. Based on Department records, each of the applicants has the applicable licenses and has the vessel capacity to meet the factors listed above.

Melissa Miller-Henson, Acting Executive Director
Fish and Game Commission
December 3, 2018
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Potential permit terms and conditions are also attached for the Commission's consideration. If approved, these terms and conditions will ensure the proper protection of marine resources, allow the Department to adequately enforce the permits, and aid in a successful research program. All data gathered will help the Department determine if a larger fishery for box crab is appropriate.

If approved at the December 12 Commission meeting, the Department will issue permits before January 1, 2019.

If you have any questions on this item, please contact Dr. Craig Shuman, Regional Manager of the Marine Region, at (916) 445-6459 or Craig.Shuman@wildlife.ca.gov.

Attachments:

- List of applicants
- Potential experimental gear permit terms and conditions

ec: Stafford Lehr, Deputy Director
Wildlife and Fisheries Division
Stafford.Lehr@wildlife.ca.gov

Craig Shuman, D. Env., Regional Manager
Marine Region
Craig.Shuman@wildlife.ca.gov

Sonke Mastrup, Environmental Program Manager
Marine Region
Sonke.Mastrup@wildlife.ca.gov

Michelle Selmon, Program Manager
Regulations Unit
Michelle.Selmon@wildlife.ca.gov

Mike Stefanak, Assistant Chief
Law Enforcement Division
Mike.Stefanak@Wildlife.ca.gov

Robert Puccinelli, Captain
Law Enforcement Division
Robert.Puccinelli@wildlife.ca.gov

Tom Mason, Senior Environmental Scientist (Supervisor)
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Tom.Mason@wildlife.ca.gov

Melissa Miller-Henson, Acting Executive Director
Fish and Game Commission
December 3, 2018
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Julia Coates, Environmental Scientist
Marine Region
Julia.Coates@wildlife.ca.gov

Susan Ashcraft, Marine Advisor
Fish and Game Commission
Susan.Ashcraft@fgc.ca.gov



DIRECTOR'S ACTION REQUEST: FISH AND GAME COMMISSION ITEMS

DFW 178A (Rev 06/11/13)

Rec. 12-4-18

Took H.C. to FGC office

To: Charlton H. Bonham, Director

Date: 11/30/18

Subject: Dec FGC Meeting: Box Crab Experimental Gear Permit Documents

Action:



For Signature



For Approval



For Information



Other:

Sent out email

Author: Julia Coates

Title: Environmental Scientist

Region/Branch: Marine Region

Issue Statement:

The Department has developed plans for a collaborative research program utilizing experimental gear permits to study the potential for development of a box crab fishery. The attached Memo details the number of qualified applicants. Draft permit terms and conditions and documents meeting project CEQA requirements are also attached.

Summary of Implications:

Authorization of this memo will allow for presentation of a list of fishermen qualified to be considered for box crab experimental gear permits to the Fish and Game Commission for their selection of permittees in advance of the December 12, 2018 Fish and Game Commission meeting. It will also allow for Commission approval of final permit terms and conditions.

Effects on Existing Law
or Regulation: N/A

Estimated Costs:

\$0.00

Time Factor or
Limitations:

Due to Commission by November 29

Recommended Action:

Approve and sign the eDAR to transmit the attached memorandum and CEQA documents to the Commission for inclusion in the December 2018 meeting materials.

- ☒ Legal Office Review/Signature: Bogdan, Wendy@Wildlife Date: December 3, 2018
- ☒ Enforcement Review/Signature: Bess, David@Wildlife Date: December 4, 2018
- ☒ LRB Review/Signature: Morgan, Joshua@Wildlife Date: December 4, 2018
- ☐ Fisheries Branch Review/Signature: _____ Date: _____
- ☐ Wildlife Branch Review/Signature: _____ Date: _____
- ☐ Marine Region Review/Signature: _____ Date: _____
- ☐ Budgets Branch Review/Signature: _____ Date: _____

Supervisor

Print Name:

Signature: _____

Date:

Title: Select Title or type in Title of Signatory

Region/Branch/Division:

Phone:

Print Name: Craig Shuman

Signature: Shuman, Craig@Wildlife

Date: 11/30/18

Title: Regional Manager

Region/Branch/Division: Marine Region

Phone: 916-445-6459

Print Name: Michelle Selmon

Signature: Selmon, Michelle@Wildlife

Date: 12/4/18

Regulations Unit Manager

Wildlife and Fisheries Division

Phone: 916-632-4674

Print Name: Stafford Lehr

Signature: _____

Date: 12/4/18

Deputy Director

Wildlife and Fisheries Division

Phone: 916-653-4673

Print Name: Melissa Miller-Henson (Acting)

Signature: See email Attached

Date: 12-5-18

Executive Director, Fish and Game Commission

Charlton H. Bonham, Director

Signature: Approved per Signed

Date: _____

MOM

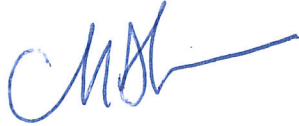
2018 DEC -6 AM 8:15

Memorandum

Date: December 3, 2018

To: Melissa Miller-Hensen, Acting Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director



Subject: **Box Crab Experimental Gear Permit Program CEQA Overview**

In April 2018, the California Department of Fish and Wildlife (Department) determined that the fishery for non-Cancer crab, which includes box crab, is an "emerging fishery" under the Marine Life Management Act. Fish and Game Code (FGC) Section 7090 requires the Fish and Game Commission (Commission) to encourage, manage, and regulate emerging fisheries. In October 2018, the Commission adopted regulations to limit incidental take of box crab in trap fisheries pursuant to FGC Section 7090(d)(1). As a first step to address the biological concerns and industry interest, the regulations were designed to slow current harvest rates while research is conducted, and to allow development of an experimental gear permit (EGP) for box crab to investigate the potential for a targeted fishery.

The proposed project is to issue EGPs to eight qualified fishermen, allowing development of a collaborative research program to study the brown box crab (*Lopholithodes foraminatus*) and the potential for development of a new target fishery under FGC section 8606. The research program goals will be to determine a sustainable harvest level for box crab, monitor bycatch associated with box crab, and determine potential appropriate fishery management procedures. The purpose of this memo is to describe staff's analysis of use of a categorical exemption under the California Environmental Quality Act (CEQA) for approval of EGPs.

Categorical Exemption for Information Collection

The approval of EGPs for box crab by the Commission is an action subject to CEQA. The review effort by Department staff pursuant to CEQA Guidelines section 15066 lead staff to conclude that the proposed action would fall within the Class 6 categorical exemption (CEQA Guidelines section 15306). This exemption is related to agency actions for information collection. The project is a collaborative research program between the Department, commercial trap fishermen, academics, and NGOs utilizing experimental gear permits to collect biological data and evaluate the potential for a targeted box crab fishery. There is no guarantee of a box crab fishery following the completion of the experimental period. In the Department's view, the Commission's approval of these EGPs is an activity that is the proper subject of CEQA's Class 6 categorical exemption.

No Exceptions to the Categorical Exemptions Apply

As to the exceptions to categorical exemptions set forth in CEQA Guidelines section 15300.2, including the prospect of unusual circumstances and related effects, the Department's review was guided by the California Supreme Court's recent decision in *Berkeley Hillside Preservation v. City of Berkeley*. Staff has reviewed all of the available information possessed by the Department relevant to the issue and does not believe approval of the EGPs poses any unusual circumstances that would constitute an exception to the categorical exemptions set forth above. Compared to the activities that fall within Class 6 generally, which include the given examples of data collection and research activities such as the effort here, there is nothing unusual about the proposed regulations.

In addition, even if there were unusual circumstances, no potentially significant effects on either a project-specific or cumulative bases are expected. The intent of the permits are to allow for a limited use of existing gear types to target box crab under an experimental gear permit program that requires monitoring and research. The minimal number of permits are not expected to have any impact on the environment. Additionally, should the Commission approve the EGPs using the potential permit conditions provided by the Department, those permit conditions will minimize any potential for environmental impacts.

Therefore, in the Department's view, the Commission's reliance on the Class 6 categorical exemption should not be precluded by the exceptions set forth in CEQA Guidelines section 15300.2.

Attachments



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Director's Office
P.O. Box 944209
Sacramento, CA 944209-2090
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



December 12, 2018

ATTACHMENT TO NOTICE OF EXEMPTION Box Crab Experimental Gear Permit Program

The California Fish and Game Commission (Commission) has taken final action under the Fish and Game Code with respect to the Box Crab Experimental Gear Permit Program on December 12, 2018. In taking its final action for the purposes of the California Environmental Quality Act (CEQA, Pub. Resources Code, § 21000 *et seq.*), the Commission approved experimental permits to eight fishermen relying on the categorical exemption for "Information Collection" contained in CEQA Guidelines section 15306. (Cal. Code Regs., tit. 14, § 15306).

Categorical Exemption for Information Collection

The categorical exemption applies to agency actions that consist of basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. The project may be for information-gathering purposes, or as part of a study leading to future action which the agency has not yet taken.

This project is a collaborative research program between the California Department of Fish and Wildlife (CDFW), commercial trap fishermen, academics, and NGOs utilizing experimental gear permits to collect biological data and evaluate the potential for a targeted box crab fishery. There is no guarantee of a box crab fishery following the completion of the experimental period. Because the project involves information gathering for possible future consideration by the Commission and will not result in significant disturbances to the box crab resource, Commission adoption of these regulations is an activity that is the proper subject of CEQA's Class 6 categorical exemption.

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk

County of: N/A

From: (Public Agency): CA Fish and Game Commission
1416 Ninth Street, Suite 1320
Sacramento, CA 95814

(Address)

Project Title: Box Crab Experimental Gear Permit Program

Project Applicant: California Department of Fish and Wildlife (CDFW)

Project Location - Specific:

Statewide

Project Location - City: N/A

Project Location - County: N/A

Description of Nature, Purpose and Beneficiaries of Project:

The project is a collaborative research program between CDFW, commercial trap fishermen, academics, and NGOs utilizing experimental gear permits to collect biological data and evaluate the potential for a targeted box crab fishery. Because the project involves information gathering for possible future consideration by the Fish and Game Commission, there is no guarantee of a box crab fishery following the completion of the experimental period.

Name of Public Agency Approving Project: California Fish and Game Commission

Name of Person or Agency Carrying Out Project: California Department of Fish and Game

Exempt Status: **(check one):**

☐ Ministerial (Sec. 21080(b)(1); 15268);

☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));

☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));

☒ Categorical Exemption. State type and section number: § 15306 - Information Collection

☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt:

The project is exempt because it will consist of basic data collection, research, and experimental management, and resource evaluation activities and will not result in a serious or major disturbance to an environmental resource. CEQA Guidelines §15306 exempts such a project for information-gathering purposes, or as part of a study leading to future action which the agency has not yet taken.

Lead Agency

Contact Person: Melissa Miller-Hensen

Area Code/Telephone/Extension: (916) 653-4899

If filed by applicant:

1. Attach certified document of exemption finding.

2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: _____ Date: _____ Title: Acting Executive Director

☐ Signed by Lead Agency ☐ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____