

STAFF SUMMARY FOR JUNE 22-23, 2016

6. HAGFISH (CONSENT)**Today's Item**Information Action

Authorization to publish notice of intent to change commercial hagfish regulations.

Summary of Previous/Future Actions

- **Today's Notice hearing** Jun 22-23, 2016; Bakersfield
- Adoption hearing Aug 24-25, 2016; Folsom

Background

Under existing law, hagfish may be commercially taken in 40-gallon barrel traps if attached to a ground line. Permittees may fish up to 25 barrel traps spread over a maximum of three ground lines.

DFW is proposing to amend Section 180.6, Title 14, to replace the 40-gallon requirement for barrel traps with a maximum total trap length of 45 inches and maximum outside diameter of 25 inches. Additional language is proposed to enact the same restrictions that are in place for other hagfish traps: 1) no take of finfish other than hagfish; and 2) no possession of any other hagfish trap type when using or in possession of barrels.

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

FGC staff: Approve request to publish notice with proposed regulations as reflected in Exhibit 1 under a motion adopting the consent calendar.

Exhibits

1. [ISOR](#)

Motion/Direction

Moved by _____ and seconded by _____ that the Commission adopts the consent calendar, items 5-6.

of trap capacity is difficult to enforce in the field due to how these traps are constructed. Therefore, it is necessary to amend Section 180.6 to allow for greater flexibility in the selection of barrels suitable to the fishery by removing the 40-gallon measurement and establishing a maximum total length and outside diameter. Department staff have measured several barrel styles to determine average and maximum length and outside diameter and have determined the appropriate measurements to be a maximum total length of 45 inches and a maximum outside diameter of 25 inches.

Allowing barrels with a maximum length and diameter measurement would increase the selection available to fishermen. Law Enforcement Division (LED) notes that dimensions are also easier to enforce in the field.

Fish and Game Code (FGC) §9001 requires a general trap permit to take finfish, mollusks or crustaceans with traps for commercial purposes. FGC §9001.6 specifies that bucket or Korean traps may only be used to take hagfish and that when these traps are used or possessed aboard a vessel, no other trap type may be possessed and that no other finfish species may be taken, possessed or sold.

Proposed Regulations

The proposed amendment to Section 180.6 deletes the 40-gallon requirement for barrel traps, which will be replaced by a maximum total trap length of 45 inches and maximum outside diameter of 25 inches. Added language would enact the same restrictions that are in place for other hagfish traps: 1) no take of finfish other than hagfish; and 2) no possession of any other hagfish trap type when using or in possession of barrels.

Benefits of the Regulation

It is the policy of the State to encourage the conservation, maintenance, and utilization of the living resources of the ocean and other waters under the jurisdiction and influence of the State for the benefit of all the citizens of the State. In addition, it is the policy of the State to promote the development of local fisheries and distant-water fisheries based in California in harmony with international law respecting fishing and the conservation of the living resources of the ocean and other waters under the jurisdiction and influence of the State. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence and the growth of local commercial fisheries. The proposed regulation will allow for the use of a gear type that is less likely to result in whale

entanglements while still providing for a commercial hagfish fishery.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 8403 and 9022, Fish and Game Code.

Reference: Sections 8403, 9001.6, 9001.7, and 9022, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None. Current regulation allows the use of barrel traps when taking hagfish. The proposed regulations increase the selection of barrels available to fishermen. While re-purposed barrels from the agricultural industry are the only economically feasible source identified by the Department for hagfish barrel traps, the regulation does not require the use of barrels or the use of re-purposed barrels from the agriculture industry.

- (d) Identification of Reports or Documents Supporting Regulation Change:

None.

- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public discussions were held prior to notice publication. The 45-day comment period provides adequate time for review of the proposed amendments.

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

No alternatives were 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 continue the current difficulty in identifying and enforcing suitable barrel sizes for hagfish. Whale entanglement in trap/pot fisheries is a concern. The number of vertical lines used in this fishery is minimal when compared to other trap fisheries; however there is still risk of encounter. The average hagfish fisherman fishes up to five ground lines while using bucket traps. Difficulty in finding 40-gallon barrels at a cost effective price or having to modify existing barrels is acting as a deterrent to fishermen who want to switch trap types. For every fisherman that switches to barrels, there would be a net reduction of two lines.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable 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 proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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. Amending this regulation will allow fishermen to utilize any barrel, up to the maximum allowed dimensions, without need for modification or ordering special barrels at significant cost. However, fishermen may continue to use Korean or bucket traps for the take of hagfish if they desire to do so.

- (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, or any benefits to the health and welfare of California residents or worker safety.

The Commission anticipates possible benefits to the State's environment due to the anticipated reduction in vertical buoy lines and traps on the seafloor if more fishermen switch to barrels.

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

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed amendment does not require fishermen to use barrel traps. Fishermen who choose to switch to barrel traps may incur costs of approximately \$30 per barrel. Total cost for the allowable 25 barrels is estimated to be about \$750.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (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:

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

Amending the existing regulation is unlikely to affect the creation or elimination of jobs which are influenced more by the foreign market

demand for hagfish.

- (b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

Amending the existing regulation is unlikely to affect the creation or elimination of hagfish businesses which are influenced more by the foreign market demand for hagfish. Fishermen will have greater flexibility when purchasing barrels to construct their traps.

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

Amending the existing regulation is unlikely to affect the expansion of hagfish businesses which are influenced by the foreign market demand for hagfish.

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

This fishery is entirely for foreign export; therefore the regulation is unlikely to affect the health and welfare of California residents.

- (e) Benefits of the Regulation to Worker Safety:

The regulation does not affect worker conditions or safety.

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

An intended benefit of the current regulation in subsection 180.6(b), was that the larger barrel, lower maximum barrel number compared with other hagfish trap types, and maximum of three ground lines per vessel could lessen the possibility of negative interactions with other fishing gear or cetaceans. However, industry has found that the requirement to use barrels of 40-gallon capacity is acting as a deterrent for fishermen to adopt this new gear. Amending the existing regulation to allow barrel traps up to a maximum length and diameter dimension would allow greater flexibility to fishermen due to differences in barrel design, thus encouraging more fishermen to adopt this method of take with the intended benefits.

Informative Digest/Policy Statement Overview

Current regulations in Section 180.6, Title 14, California Code of Regulations (CCR) allow hagfish, *Eptatretus spp.*, to be taken in 40-gallon barrel traps if attached to a ground line. Permittees may fish up to 25 barrel traps spread over a maximum of three ground lines.

Proposed Regulation Amendment

The proposed amendment replaces the 40-gallon requirement for barrel traps with a maximum total trap length of 45 inches and maximum outside diameter of 25 inches. Additional language is proposed to enact the same restrictions that are in place for other hagfish traps: 1) no take of finfish other than hagfish; and 2) no possession of any other hagfish trap type when using or in possession of barrels.

BENEFITS OF THE PROPOSED REGULATIONS

The proposed amendment would redefine maximum barrel size using linear dimensions instead of volume. Due to the variability in barrel manufacturing, linear dimensions offer flexibility to fishermen who want to switch to this gear and a consistent standard that enforcement staff can validate easily. With greater flexibility, more fishermen may switch over to this gear type which would reduce the number of traps on the seafloor and the number of vertical lines in the water, which may result in fewer whale entanglements. Adoption of sustainable fishing regulations, including gear type, provides for the maintenance of sufficient fish populations and ensures their continued existence.

EVALUATION OF INCOMPATIBILITY WITH EXISTING REGULATIONS:

Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game 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 commercial take of finfish using traps (Sections 8403 and 9022, Fish and Game Code). No other State agency has the authority to promulgate commercial fishing regulations. The proposed amended regulations are compatible with Sections 180, 180.2, 180.4 and 180.5, Title 14, CCR, which address other aspects of commercial take of finfish using traps. The Commission has searched the CCR for any regulations regarding the use of traps for the commercial take of hagfish and has found no such regulation; therefore the Commission has concluded that the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

Regulatory Text

Section 180.6, Title 14, CCR, is amended to read:

§ 180.6. Hagfish Traps.

(a) All openings in traps used to take hagfish, excluding the entrance funnel, shall have a minimum diameter of 9/16 inch in any dimension.

(b) Hagfish may be taken in ~~40-gallon~~ barrel traps, if attached to a ~~central~~-ground line. ~~No permittee may possess more than 25 barrel traps may be possessed aboard a vessel or in the water or combination thereof. Each barrel trap shall be no greater than 45 inches total length and have an outside diameter no greater than 25 inches at its widest point.~~ Barrels may be attached to a maximum of three ground lines. If using barrel traps, no other hagfish trap type may be used or possessed aboard the vessel. When barrel traps are used or possessed aboard a vessel, no species of finfish other than hagfish shall be taken, possessed, or sold. Popups shall not be used on buoy lines attached to barrel traps.

Note: Authority cited: Sections 8403 and 9022, Fish and Game Code. Reference: Sections 8403, 9001.6, 9001.7 and 9022, Fish and Game Code.

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