

ATTACHMENT TO NOTICE OF EXEMPTION

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

The California Fish and Game Commission (Commission) has taken final action under the Fish and Game Code and the Administrative Procedure Act with respect to the above referenced project on December 16, 2021. On August 18, 2021, the Commission noticed its intent to add Section 91, amend sections 90, 120.1, 149, 180 and 704, and repeal Section 149.3, Title 14, California Code of Regulations, to implement an Experimental Fishing Permit (EFP) Program pursuant to Fish and Code (FGC) Section 1022. In taking its final action for the purposes of the California Environmental Quality Act (CEQA, Pub. Resources Code, § 21000 *et seq.*), the Commission adopted the regulations relying on the categorical exemptions for information collection (Class 6), and actions by regulatory agencies for protection of natural resources and the environment (Class 7 and 8).

Categorical Exemption for Information Collection

The Commission concludes that its adoption of the regulations is an activity that falls within the Class 6 categorical exemption, Information Collection, pursuant to CEQA Guidelines Section 15306. The exemption applies to basic information collection, research, experimental management, and resource evaluation actions that do not result in a serious or major disturbance to any environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded.

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 pursuant to FGC Section 1022. The EFP Program will collect crucial information on a limited-term basis to evaluate the effectiveness and feasibility of new fishing methods. New fishing methods may include modifications to existing gear that help reduce bycatch or habitat impact. The EFP program will also assist the California Department of Fish and Wildlife (CDFW) to collect and develop biological information to help facilitate more accurate, sustainable resource management.

Importantly, all regulatory changes resulting from future activities authorized under the EFP Program must undergo independent environmental review, including recommendations to authorize proposed activities on a permit-by-permit basis. Furthermore, all activities authorized under this program are specifically prohibited from adversely impacting any natural resource under the terms of FGC Section 1022.

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As to the exceptions to the categorical exemptions set forth in CEQA Guidelines section 15300.2, staff was guided by the California Supreme Court's decision in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal. 4th 1086. Staff does not believe the EFP Program is unusual compared to activities that fall within the respective class generally, nor does it believe the adopted EFP permit approval framework is unusual with respect to the location, duration, or project-specific setting. Moreover, even if there is something unusual about the EFP Program, and staff does not believe there is, staff is not aware of and does not believe there is anything about the EFP Program that might give rise directly or indirectly to any related potentially significant effect. After review, staff also believes nothing unusual about the EFP Program would contribute to cumulative effects. The EFP Program framework, which is largely procedural, provides CDFW and the Commission discretion to evaluate and authorize, respectively, all future permit proposals to ensure that no permit will be granted if it poses a significant risk to the environment. The permits are also limited in duration, lasting no longer than 4 years.

As to the location more specifically, staff recognizes application of the Class 6 exemption is qualified in particularly sensitive environments where a project may impact an environmental resource of hazardous or critical concern and where the resource is designated, precisely mapped, and officially established by law. Given the discretion afforded to the Commission in evaluating and authorizing future EFPs, together with the EFP Program's prohibition on granting permits that may adversely impact marine resources or the environment, staff does not believe the EFP Program or future authorized EFPs will occur or have an impact on a particularly sensitive environment.

Categorical Exemptions to Protect Natural Resources and the Environment

The Commission has also determined that the EFP Program meets the criteria of the categorical exemptions contained in CEQA Guidelines Sections 15307 (Action by Regulatory Agencies for Protection of Natural Resources) and 15308 (Action by Regulatory Agencies for Protection of the Environment). Therefore, the regulation is exempt from the provisions of CEQA under the Class 7 and Class 8 exemptions. The exemptions apply to agency actions to protect natural resources and the environment, respectively.

Class 7 and Class 8 exemptions apply to actions taken by regulatory agencies to assure the maintenance, restoration, enhancement, and protection of a natural resource and the environment. The central objective of the EFP Program is to help induce innovative modifications to existing fisheries to reduce adverse environmental impacts such as habitat disturbance and bycatch. By allowing data collection to aid CDFW's effort in reducing impacts to the marine ecosystem and its resources, the proposed action qualifies for the Class 7 and Class 8 exemptions.

Finally, staff does not believe reliance on the Class 6, Class 7, and Class 8 categorical exemptions to approve the project under CEQA is precluded by the exceptions set forth

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in CEQA Guidelines section 15300.2. That also includes, beyond the significant effect, cumulative impact, and location exceptions discussed, the scenic highways, hazardous waste site, and historical resources exceptions. None of these latter exceptions are relevant to the EFP Program.