

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: NA

From: (Public Agency): California Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244-2090

Project Title: Gear Innovations Testing and Validation in the California Dungeness Crab Fishery

Project Applicant: National Marine Sanctuary Foundation

Project Location - Specific: Off the coast of California between the Sonoma/Mendocino counties' line (38° 46.125' N. latitude) and Lopez Point (36° 00' N. latitude), in depths ranging from 30 to 300 feet.

Project Location - City: NA

Project Location - County: Multiple

Description of Nature, Purpose and Beneficiaries of Project:

Experimental fishing permit (EFP) to test the commercial use of several pop-up fishing systems (i.e., Desert Star ARC-1XD, EdgeTech 5112, Fiomarine Fiobuoy, and Guardian Ropeless System) in the California Dungeness crab fishery to inform future alternative gear decisions under the California Department of Fish and Wildlife's Risk Assessment Mitigation Program. See attachment for additional information.

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

Name of Person or Agency Carrying Out Project: National Marine Sanctuary Foundation

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: Class 6, California Code of Regulations, Title 14, Section 15306
- Statutory Exemptions. State code number:

Reasons why project is exempt: See attachment.

Lead Agency

Contact Person: Melissa Miller-Henson

Area Code/Telephone: (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: *Melissa A. Miller-Henson* Date: June 15, 2023 Title: Executive Director

Signed by Lead Agency Signed by Applicant. Date Received for filing at OPR:

June 15, 2023

ATTACHMENT TO NOTICE OF EXEMPTION

RE: Experimental Fishing Permit for the National Marine Fisheries Foundation's Gear Innovations Testing and Validation in the California Dungeness Crab Fishery Project (EFP Application 2023-02)

The California Fish and Game Commission (Commission) has taken final action under the California Fish and Game Code and the Administrative Procedure Act with respect to the experimental fishing permit (EFP) application for the above referenced project on June 15, 2023. In taking its final action for the purposes of the California Environmental Quality Act (CEQA, Public Resources Code, Section 21000 et seq.), the Commission authorized the California Department of Fish and Wildlife (Department) to issue a Tier 2 EFP to the National Marine Sanctuary Foundation for the above referenced project in accordance with Section 91, Title 14, California Code of Regulations (CCR), relying on the categorical exemption for "Information Collection" contained in CEQA Guidelines, Section 15306, Title 14, California Code of Regulations.

Categorical Exemption for Information Collection

Section 15306 of the CEQA Guidelines (Class 6) provides a categorical exemption for information collection projects that consists 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 section goes on to note that these information collection projects 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 is to allow fishers and scientific partners to obtain limited, short-term exemptions from state fishing laws and regulations to engage in commercial or recreational marine fishing activities that are otherwise prohibited, to inform fisheries management (Fish and Game Code Section 1022). EFPs may be approved for one or a combination of the following purposes: research, educational, limited testing, data collection, compensation fishing, conservation engineering, and exploratory fishing.

The Commission approved the National Marine Sanctuary Foundations's request for a Tier 2 EFP to conduct a collaborative research project aimed at testing fishing gear innovations to mitigate the risk of marine life entanglements while providing increased fishing opportunities. The project proposes testing the commercial use of several pop-up fishing systems in the California Dungeness crab fishery, with Department facilitation, to inform future alternative gear decisions under the California Department of Fish and Wildlife's Risk Assessment Mitigation Program (RAMP; proposed project).

The proposed project would allow up to five permitted vessels to test different pop-up fishing systems to assess performance, feasibility, and compatibility in the California Dungeness crab fishery. The pop-up fishing systems would be comprised of a pop-up device (Desert Star ARC-1XD, EdgeTech 5112, Fiomarine Fiobuoy, and Guardian Ropeless System) attached or mounted onto a single trap. The vertical line (rope) and buoy are stored with the trap at depth until release is activated via an acoustic command or a pre-determined interval has elapsed.

The proposed project is divided into two stages:

- In Stage 1, the National Marine Sanctuary Foundation will provide participants with instruction and hands-on training on testing procedures, data collection, and gear operation (dockside and at-sea). Participants/participating vessels must complete a minimum of 10 successful practice deployments/retrievals per system type using a backup system (e.g., reserve buoy or an attached backup line and a surface marker buoy).
- In Stage 2, each participating vessel will test up to four different pop-up fishing systems without a backup system.

The proposed fishing activities would occur off the coast of California between the Sonoma/Mendocino counties' line (38° 46.125' N. latitude) and Lopez Point (36° 00' N. latitude), in depths ranging from 30 to 300 feet. Vessels will test 1 pop-up fishing system type at a time. No more than 50 traps will be deployed at any given time under the EFP. The soak time for the pop-up fishing systems will range between 1 to 4 days. All vessels will be equipped with a Pelagic Data Systems device to track vessel location and movement throughout the duration of the proposed project (up to 4 years). The proposed project activities may occur throughout the year but will largely occur from April to October. Catch would only be retained and landed if the fishing zone where gear was deployed is open for commercial activity (i.e., not closed pursuant to Fish and Game Code Section 8276; Fish and Game Code Section 8276.1; Section 132.8, Title 14, CCR; or elevated domoic acid).

The EFP would exempt the proposed project from several provisions in Fish and Game Code and/or Title 14, CCR:

- Fish and Game Code Section 9005 and subsections 132.6(a) and 180.5, Title 14, CCR (surface buoy marking requirement)
- Fish and Game Code Section 8276, subdivision (d) (requirement for removing commercial Dungeness crab gear from state waters at close of season)
- Fish and Game Code Section 8276.5 and Section 132.1, Title 14, CCR (requirement to affix department-issued buoy tags to deployed traps)

All activities conducted under the EFP must comply with the terms and conditions placed on the permit for research purposes and the conservation and management of marine resources and the environment. The proposed EFP project will be subject to special conditions deemed necessary by the Commission to avoid direct and indirect adverse impacts the marine resources and the environment, including:

- restrictions on type and amount of fishing gear that may be used to conduct the authorized activities;
- requirements for marking fishing gear;
- rules to suspend fishing operations or move fishing gear in response to elevated entanglement risks;
- requirement for a gear recovery plan; and
- best practices for avoiding marine life entanglement.

Because the EFP authorizes experimental fishing activity specifically tailored to research and evaluate performance, feasibility, and compatibility in the California Dungeness crab fishery, the project is the proper subject of CEQA's Class 6 categorical exemption. The Commission does not believe the activities authorized by the EFP will result in a serious or major disturbance to an environmental resource.

Moreover, the Commission does not believe reliance on the Class 6 categorical exemption to approve the permit under CEQA is precluded by the exceptions set forth in CEQA Guidelines Section 15300.2 (Title 14, CCR). Initial Commission staff review was guided by the California Supreme Court's recent decision in *Berkeley Hillside Preservation v. City of Berkeley*. Staff reviewed all of the available information in its possession relevant to the issue and does not believe authorizing the permit poses any unusual circumstances that would constitute an exception to the cited categorical exemption. Even if there were unusual circumstances, which staff does not believe is the case, no potentially significant effects on either a project-specific or cumulative basis are expected from this project.

Furthermore, all activities authorized under the EFP Program are specifically prohibited from adversely impacting any established fisheries, marine living resources, or other natural resources under the provisions of Fish and Game Code Section 1022. An EFP shall be revoked if the continued use would have an adverse impact on any resource or allocation of a resource, or other adverse impact to established fisheries or other marine living resources, pursuant to Fish and Game Code subdivision (a)(2). Therefore, the exceptions set forth in CEQA Guidelines Section 15300.2 that would preclude the use of the categorical exemption do not apply and no further review is required.