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**Pro Hac Vice Pending*

Attorneys for Petitioner

SUPERIOR COURT OF CALIFORNIA

COUNTY OF VENTURA

CHRISTOPHER M. WILLIAMS,

Petitioner,

v.

CALIFORNIA DEPARTMENT OF FISH AND
WILDLIFE,

Respondent.

No. 56-2022-00565405-CU-WM-VTA

**VERIFIED PETITION FOR
PEREMPTORY WRIT OF MANDATE
(CCP §§ 1085, 1087)**

INTRODUCTION

1. Petitioner Christopher M. Williams brings this action under California Code of Civil Procedure § 1085 against the California Department of Fish and Wildlife (Department) for the denial of his general gill/trammel net permit transfer request under California Fish & Game Code § 8681.5.

2. Mr. Williams is a third-generation fisherman who resides in Ventura County, California. He has worked as a crewmember on vessels that use gill nets for several years, including on vessels owned by his family's commercial fishing business—a business providing important resources for other businesses along the California coast. Mr. Williams now wishes to carry on the family business by becoming a vessel captain. To that end, he used his life savings to purchase and

1 equip a fishing vessel before getting a general gill/trammel net permit through the permit transfer
2 process outlined in the Fish & Game Code.

3 3. That process, governed by Fish & Game Code § 8681.5, provides that a fisherman
4 may apply to the Department to have a general gill/trammel net permit transferred to him from
5 another fisherman who meets certain requirements and has an existing, valid permit—if the transfer
6 applicant is “otherwise qualified under the regulations adopted pursuant to [Fish & Game Code]
7 Section 8682[.]”

8 4. The Fish and Game Commission has adopted a regulation under Fish & Game Code
9 § 8682, codified at 14 Cal. Code Regs. (CCR) § 174(b), which currently determines whether a
10 permit transfer applicant qualifies for a permit transfer under Fish & Game Code § 8681.5.

11 5. In July 2021, Mr. Williams requested a permit transfer from another fisherman and
12 presented the Department with extensive evidence of his fishing history that made him qualified to
13 receive the permit transfer under the statute and regulation.

14 6. But in September 2021, the Department denied Mr. Williams’s permit transfer
15 request. In doing so, the Department defied the regulation’s requirements and, in the process,
16 reversed its decades-long regulatory interpretation of what the regulation requires of fishermen to
17 be qualified for a permit transfer.

18 7. For many years, the Department construed 14 CCR § 174(b) to require transfer
19 permit applicants to meet, as relevant here, only one of five enumerated criteria demonstrating he
20 possessed the knowledge and experience required to fish with gill or trammel nets to obtain a permit
21 transfer from another experienced fisherman. In effect, any fisherman who demonstrated
22 experience through being a crewmember on a gill/trammel net vessel or demonstrated knowledge
23 through a proficiency exam, would qualify for a permit transfer under Fish & Game Code § 8681.5
24 and 14 CCR § 174(b). But the Department is now construing 14 CCR § 174(b) to require any
25 fisherman seeking a permit transfer under Fish & Game Code § 8681.5 to either already possess a
26 general gill/trammel net permit or to meet requirements that could only be met by a fisherman who
27 illegally fished without a permit to obtain the required qualifications. Put differently, the
28 Department is now construing the regulation to prevent all future fishermen from obtaining a

1 permit, which will eventually phase out general gill/trammel permits and will end the general
2 gill/trammel net fishery.

3 8. In denying Mr. Williams's permit transfer request based on its newfound
4 interpretation of 14 CCR § 174(b), the Department ignored its duty under the Fish & Game Code
5 to grant permit transfers to fishermen qualified to receive general gill/trammel net permits. The
6 Court should thus issue a writ of mandate under Cal. Code Civ. Proc. § 1085 compelling the
7 Department to approve Mr. Williams's general gill/trammel net permit transfer under Fish & Game
8 Code § 8681.5.

9 PARTIES

10 9. Petitioner Christopher M. Williams is an experienced fisherman residing in Ventura
11 County, California. He wishes to continue the family trade by obtaining a general gill/trammel net
12 permit under Fish & Game Code § 8681.5.

13 10. Respondent California Department of Fish and Wildlife is a state administrative
14 body operating within the California Natural Resources Agency. *See* Fish & Game Code § 700.

15 JURISDICTION AND VENUE

16 11. This Court has jurisdiction over this writ petition under Cal. Code Civ. Proc. § 1085.

17 12. Venue is proper in the Superior Court of Ventura County under Cal. Code Civ. Proc.
18 § 393 because Respondent is a public agency and because Mr. Williams's injury arose in Ventura
19 County where he owns and would operate his fishing vessel.

20 13. There is no appeal process for the denial of a permit transfer request under Fish &
21 Game Code § 8681.5. Thus, the only way the Department may be compelled to act is through a
22 writ of mandate. This action is therefore appropriate and required because no other plain, speedy,
23 and adequate remedy at law is available to Mr. Williams in the normal course of law. *See* Cal. Code
24 Civ. Proc. § 1086.

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LEGAL BACKGROUND

History of General Gill/Trammel Net Permitting in California

The California Legislature Adopts General Gill/Trammel Net Permitting

14. The California Legislature enacted Fish & Game Code §§ 8681 and 8682 in 1980 to institute a permitting regime for general gill nets. *See* 1980 Cal. Stat. c. 961, pp. 3054–55.¹ At that time, Fish & Game Code § 8681 required fishermen who wished to use a gill net to obtain a general permit, providing that “[g]ill nets shall not be used for commercial purposes except under a revocable, nontransferable permit issued by the [D]epartment.” *Id.*

15. Fish & Game Code § 8682 delegated to the California Fish and Game Commission authority to promulgate regulations, providing:

The commission shall establish regulations for the issuance of gill net permits as necessary to establish an orderly gill net fishery * * * Such regulations shall include, but are not limited to, a requirement that persons being granted a permit have had previous experience as a crewmember of a vessel using gill nets or have successfully passed a proficiency test administered by the department, under such regulations as the commission shall prescribe.

Id.

16. Around a year later, in 1981, the Commission issued regulation 14 CCR § 174 under Fish & Game Code § 8682, which specified the requirements for who may obtain a new gill net permit. The regulation, as written in 1981, allowed a fisherman to qualify for a gill net permit if he or she met **any** of these criteria individually:

[T]o qualify for a permit, an applicant shall: (1) Have worked as a crewmember for at least 12 months on vessels using gill nets or trammel nets and shall have worked at least 180 days at sea on such vessels; **or** (2) Pass a proficiency examination administered by the department. The proficiency examination shall include written and performance tests which demonstrate knowledge of the proper use of gill nets; **or** (3) Prove to the director’s satisfaction that as the owner or operator of a legally registered commercial fishing vessel, he has landed at least 10,000 pounds of fish during a 12-month period, or has landed fish during a 12-month period for which he was paid at least \$10,000. Only landings of fish caught by the use of gill nets shall be used to satisfy the catch requirements of this subsection; **or** (4) Prove to the director’s satisfaction that as the owner or operator of a legally registered commercial fishing vessel, he has landed at least 1,000 pounds of fish taken in gill nets in 4 of the 5 license years prior to the date of application; **or** (5) Have possessed a permit issued pursuant to this section during the previous season and shall have

¹ <https://bit.ly/3w4x3ba>.

1 complied with subsection (f) of these regulations. If a permittee has qualified for a
2 permit pursuant to subsection (b)(5) during the four previous seasons, he may not
3 qualify on the basis of previously possessing a permit, but may qualify pursuant to
sections (b)(1), (b)(2), (b)(3), **or** (b)(4).

4 Ex. A, p. 2 (emphasis added).

5 *Statutory and Regulatory Changes to Add Trammel Nets*

6 17. Also in 1981, the Legislature amended Fish & Game Code §§ 8681 and 8682 to
7 require a permit for trammel nets. *See* 1981 Cal. Stat., c. 354, pp. 1515–16.²

8 18. Around a year later, in 1982, the Commission again amended regulation 14 CCR
9 § 174(b) to reflect the 1981 statutory amendment by adding trammel nets to the permitting regime.
10 The Commission did not change 14 CCR § 174(b)’s substance (other than including trammel nets
11 in the regulation) but did seemingly substitute a period for “or” after adding trammel nets in
12 subsection 174(b)(2):

13 Subsection (b)(2) of Section 174 is amended to read: (2) Pass a proficiency
14 examination administered by the [D]epartment. The proficiency examination shall
15 include written and performance tests which demonstrate knowledge of the proper
use of gill nets; or trammel nets.

16 Ex. B, p. 2 (alterations in the original). That period, however, was not an underlined change in the
17 regulatory amendment. Nor was there any underlined notation removing the “or” from the
18 regulation.

19 19. Indeed, there was no explanation in the statutory or regulatory history or otherwise
20 noting that fishermen could now only qualify for a new permit if they met subsection 174(b)(1) or
21 (b)(2), **and** either subsection (b)(3), or (b)(4), or (b)(5).

22 20. The Department continued, after the 1982 regulatory amendment, to require
23 fishermen to meet only one of the enumerated permit eligibility criteria in 14 CCR § 174(b) to
24 qualify for a new general gill/trammel net permit under Fish & Game Code § 8681.

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27 _____
28 ² <https://bit.ly/3s9GNQm>

The California Legislature Puts a Moratorium on New Gill/Trammel Net Permits

21. In 1985, the California Legislature amended the Fish & Game Code again. *See* 1985 Cal. Stat., c. 1002, pp. 3220–22.³ The Legislature’s goal in the 1985 legislative amendment was to, among other things, halt the increasing number of general gill/trammel net permits by placing a moratorium on new permits for a limited time, but also to allow for existing permit holders to transfer their permits to other qualified fishermen. *See generally* Ex. C.

22. Accordingly, the Legislature placed a moratorium on issuing new general gill/trammel net permits until 1990, Fish & Game Code § 8681.5(a), and established general gill/trammel net permit transfers between fishermen who are “otherwise qualified”:

Notwithstanding subdivision (a) or Section 8681, any person who has an existing, valid permit issued pursuant to Section 8681, and presents to the department satisfactory evidence that he or she has taken and landed fish for commercial purposes in at least 15 of the preceding 20 years, may transfer that permit to any person otherwise qualified under the regulations adopted pursuant to Section 8682 upon payment of the fee prescribed under Section 8683.

Fish & Game Code § 8681.5(b).

23. Following this legislative transition from an open to a limited entry permitting scheme, the Commission once again amended regulation 14 CCR § 174(b) in 1986. *See* Ex. D. But the 1986 regulatory amendment did not alter the criteria for who is “otherwise qualified” for a permit transfer from the criteria that a fisherman needed to meet for a new permit before the 1985 moratorium. The regulatory amendment simply eliminated subsection 174(b)(5)’s requirement that existing permittees must requalify for a permit after a certain period, thus making it easier for existing permit holders to renew their permit and continue fishing with gill/trammel nets under the regulation. Subsection 174(b)(5) now reads that an applicant shall “[h]ave possessed a permit issued pursuant to this section during the previous season and shall have complied with subsection (f) of these regulations.”

24. The 1986 regulatory amendment also specifically noted in the “Description of Problem or Condition That Regulation Change is Intended to Change” that to “initially qualify for

³ <https://bit.ly/37UvdBX>.

1 a gill and trammel net permit, a fisherman is required to pass a proficiency examination; **or**
 2 demonstrate participation in gill net fisheries by meeting specific landing requirements; **or**
 3 demonstrate experience as a crewman on a gill net vessel.” Ex. D, p. 18 (emphasis added). In other
 4 words, the Commission, as of 1986, continued to recognize that fishermen could meet the 14 CCR
 5 § 174(b) regulatory requirements by showing they met any of subsections 174(b)(1)–(5).

6 25. The Commission has not amended subsections 174(b)(1)–(b)(5) since 1986.

7 26. As a result of these regulatory amendments, 14 CCR § 174(b) now states that to
 8 qualify for a general gill/trammel net permit transfer, an applicant shall:

- 9 (1) Have worked as a crewmember for at least 12 months on vessels using gill nets
 10 or trammel nets and shall have worked at least 180 days at sea on such vessels; **or**
 11 (2) Pass a proficiency examination administered by the [D]epartment. The
 12 proficiency examination shall include written and performance tests which
 13 demonstrate knowledge of the proper use of gill nets or trammel nets. (3) Prove to
 14 the director’s satisfaction that as the owner or operator of a legally registered
 15 commercial fishing vessel, he has landed at least 10,000 pounds of fish during a 12-
 16 month period, or has landed fish during a 12-month period for which he was paid
 at least \$10,000. Only landings of fish caught by the use of gill nets or trammel nets
 shall be used to satisfy the catch requirements of this subsection; **or** (4) Prove to
 the director’s satisfaction that as the owner or operator of a legally registered
 commercial fishing vessel, he has landed at least 1,000 pounds of fish taken in gill
 nets or trammel nets in 4 of the 5 license years prior to the date of application; **or**
 (5) Have possessed a permit issued pursuant to this section during the previous
 season and shall have complied with subsection (f) of these regulations.

17 14 CCR § 174(b) (emphasis added).

18 ***Voters Adopt California Constitutional Amendment Article X B***

19 27. In 1990, California voters passed Proposition 132 amending the California
 20 Constitution, which is now codified at Fish & Game Code § 8610.4. The constitutional amendment
 21 banned certain fishing with gill or trammel nets but left in place Fish & Game Code § 8681.5 and
 22 the regulations promulgated under that code provision in effect on January 1, 1989. *See* Fish &
 23 Game Code § 8610.4; Cal. Const. art. X B, § 4.

24 28. The constitutional amendment effectively transformed the legislative moratorium
 25 on new general gill/trammel net permits into a permanent limited entry permitting scheme.
 26 Consequently, the only way for a fisherman to now obtain a general gill/trammel net permit is
 27 through the transfer process outlined in Fish & Game Code § 8681.5 and 14 CCR § 174(b).

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For many years, the Department Allows Permit Transfers

29. In the decades following Proposition 132, the Department continued to approve general gill/trammel net permit transfers to fishermen like Mr. Williams who did not meet the requirements under 14 CCR 174 subsections 174(b)(3), or (b)(4), or (b)(5), but who were “otherwise qualified” for a permit under either subsections (b)(1) or (b)(2).

FACTUAL ALLEGATIONS

Mr. Williams’s Transfer Permit Application and the Department’s Denial

30. In July 2021, Mr. Williams sent the Department a general gill/trammel net permit transfer request for permit number GGN083 from Mr. Michael McCorkle to himself. Ex. E.

31. As proof that Mr. Williams was qualified for the permit transfer, the request included: (1) notarized documents of crewmember experience signed by his father, Christopher E. Williams; (2) copies of California Department of Fish and Wildlife’s Gill and Trammel Net Fishing Logs and Transportation Receipts from December 2020 through May 2021 in Christopher E. Williams’s name and commercial fishing identification number; (3) fisherman Michael McCorkle’s original GGTPNP (general gill/trammel net permit); (4) Mr. Williams’s commercial fishing license; and (5) the statutory \$100 transfer fee. *Id.*

32. A few months later, the Department sent Mr. Williams a letter denying his permit transfer request. Ex. F. In its denial letter, the Department admitted that the notarized documents showed Mr. Williams had “worked as a crewmember for at least 12 months on vessels using gill nets or trammel nets and . . . worked at least 180 days at sea on such vessels” as required by 14 CCR § 174(b)(1). Ex. F, p. 2. Even so, the Department denied Mr. Williams’s request because he did not provide evidence showing that he met the landing requirements described in subsection (b)(3) or (b)(4), or the permitting requirements described in (b)(5). *See id.*

33. Put differently, the Department denied Mr. Williams’s permit transfer request based on an interpretation of 14 CCR § 174(b) requiring fishermen to establish they meet subsection (b)(1) or (b)(2) and (b)(3) or (b)(4) or (b)(5) to be considered “otherwise qualified” under Section 8681.5.

34. The Department’s denial letter included no procedure for a formal appeal.

Pacific Legal Foundation's Letter to the Department and the Department's Response

35. In response to the Department's letter, Pacific Legal Foundation (PLF) sent a letter to the Department, on PLF's behalf, expressing concern with the Department's erroneous interpretation of 14 CCR § 174(b) and asking the Department to reconsider that policy. *See* Ex. G.

36. PLF's letter explained that the Department's interpretation of 14 CCR § 174(b) is illegal because it contradicts Fish & Game Code § 8681.5, which expressly allows permit transfers to fishermen who are "otherwise qualified," because the Department's interpretation leads to absurd results by requiring permit transfer applicants to engage in activities only permittees may engage in, and because it would cause an effective ban on entry into the general gill/trammel net fishing industry. *Id.* at pp. 2–4. The letter concluded by urging the Department to abide by the Fish & Game Code's text and history and not require permit transfer applicants, like Mr. Williams, to satisfy 14 CCR subsections 174(b)(1) or (b)(2) and (b)(3), or (b)(4), or (b)(5) to obtain a general gill/trammel net permit transfer. *Id.*

37. The Department responded to PLF's letter by denying that its interpretation of 14 CCR § 174(b) is illegal. *See* Ex. H.

38. In response to PLF's assertion that the Department's interpretation contradicts Fish & Game Code § 8681.5, which allows for permit transfers and thus evidences legislative intent to regulate gill/trammel net permitting through a limited entry system—not phase out gill/trammel nets permits—the Department stated:

while the Legislature might not have intended, as you suggest, to eventually effectively ban entry into the commercial gill/trammel net fishing industry, you have not provided, nor is the Department aware of, any Legislative materials, e.g., legislative analyses or similar materials, to support this theory. And most importantly, the Department is unaware of any express statutory language stating this intent.

Id. at p. 2–3.

39. The Department also noted,

[a]lternatively, it is also possible that the Legislature intended to strictly limit Permit transfers, including transfers to persons entering the fishery, since it deemed the Permit to be "nontransferable" and limited who could initially obtain permits.

(Fish & G. Code, § 8681, subd. (a).). Accordingly, Section 174, subdivision (b) would be consistent with this intent by phasing out transfers.

Id. at p. 3.

40. Since the Department's denial of Mr. Williams's permit transfer request, he has suffered damages in lost revenue from his inability to fish with a general gill/trammel net permit.

41. Mr. McCorkle is still ready, willing, and able to transfer his general gill/trammel net permit to Mr. Williams and would do so but for the Department's denial of Mr. Williams's permit transfer request.

CAUSE OF ACTION:

Writ of Mandate (Code Civ. Proc. §§ 1085, 1087) (Failure to Comply with Cal. Fish & Game Code § 8681.5 and 14 CCR § 174)

42. Paragraphs 1 through 41 set forth above are realleged and incorporated by reference.

43. Under Cal. Code Civ. Proc. §§ 1085 and 1087, this Court may issue a peremptory writ of mandate to the Department to compel the performance of a mandatory or ministerial duty to conform its action to the standards and requirements of law. *Venice Town Council, Inc. v. City of Los Angeles*, 47 Cal. App. 4th 1547, 1558 (1996), *as modified on denial of reh'g* (Aug. 22, 1996) ("A writ of mandate will lie to 'compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust or station' 'upon the verified petition of the party beneficially interested,' in cases 'where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.'") (citations omitted).

44. The Department has a nondiscretionary duty to transfer a general gill/trammel net permit from a qualified transferor "to any person otherwise qualified under the regulations adopted pursuant to Section 8682." Fish & Game Code § 8681.5(b).

45. To be "otherwise qualified" under 14 CCR § 174(b) for a permit transfer, a transferee need only show, as relevant here, that he has met any one of the qualifications set out in subsections 174(b)(1)–(b)(5)—which would only require that he has "worked as a crewmember for at least 12 months on vessels using gill nets or trammel nets and shall have worked at least 180 days at sea on such vessels." 14 CCR § 174(b)(1).

1 46. Mr. Williams presented evidence, accepted by the Department in his permit transfer
2 request, that he was a crewmember for at least 12 months on vessels using gill or trammel nets and
3 had worked for at least 180 days at sea on those vessels. Ex. E, p.1.

4 47. But the Department still denied his permit transfer request. Ex. F, p. 2.

5 48. The Department's denial of his transfer permit request was therefore unlawful.

6 49. *First*, any interpretation of 14 CCR § 174(b) other than that it only requires a
7 fisherman to meet subsection 174(b)(1)—as Mr. Williams demonstrated—to qualify for a general
8 gill/trammel net transfer permit defies the Commission's enacted regulatory text in the 1982
9 regulatory amendment. That regulatory amendment did not underline the period after it added
10 trammel nets to the regulation, nor did the regulatory amendment underline any change in which it
11 removed "or" from the regulation. This shows the Commission did not intend to change the
12 qualifications required to obtain a permit from the requirements as enacted in its 1981 regulation
13 other than adding trammel nets to the qualification requirements. *See* Ex. B, p. 2. In other words,
14 the addition of the period and the removal of "or" from the regulation is a codification error and
15 the operative language from the 1981 regulation, other than the underlined addition of trammel
16 nets, is still the effective regulatory law. *See In re A.G.*, 186 Cal. App. 4th 1454, 1460–61 (2010)
17 ("[N]umerous cases have stated that when there is a conflict between a challenged law as enacted
18 and as codified, the court must treat the law as enacted as the relevant and controlling law."); *see*
19 *also Center for Biological Diversity v. Department of Conservation*, 26 Cal. App. 5th 161, 178–79
20 (2018) (applying this legal principle to regulations).

21 50. *Second*, assuming 14 CCR 174(b)'s text as codified requires a fisherman to meet not
22 only subsection (b)(1) or (b)(2), but also subsection (b)(3), or (b)(4), or (b)(5) before being
23 "otherwise qualified," that text results from a scrivener's error. Courts recognize that, while the
24 plain meaning of legal text should almost always prevail, there are exceptions for "scrivener's
25 errors, absurd results, and results at odds with the unmistakable or clear intent of the Legislature."
26 *People v. Singh*, 92 Cal. App. 4th Supp. 13, 17 (2001).

27 51. There is no evidence in the regulatory record that the Commission intended to
28 substantively change the requirements for who qualified for a general gill/trammel net permit in

1 the 1982 regulatory amendment. Indeed, the only noted change in the regulatory scheme was to
2 subject trammel nets to the permitting requirement. *See* Ex. B, p. 2. There is simply no indication
3 other than it was an inexplicable, accidental error to substitute a period for “or” in the 1982
4 regulatory amendment. Thus, if the regulation allowed a fisherman to obtain a new permit by
5 meeting only subsection 174(b)(1) before the 1985 moratorium, a fisherman who seeks a transfer
6 permit under Fish & Game Code § 8681.5 is “otherwise qualified” under the regulation if he meets
7 only subsection 174(b)(1) or any of the other enumerated qualifications in the regulation.

8 52. That the 1982 regulatory change was a scrivener’s error is buttressed by the absurd
9 results that change would produce. “When interpreting a statute” courts “begin with the text * * *
10 as the best indicator of legislative intent” but may “reject a literal construction that is contrary to
11 the legislative intent apparent in the statute or that would lead to absurd results.” *California Charter*
12 *Schs. Ass’n v. Los Angeles Unified Sch. Dist.*, 60 Cal. 4th 1221, 1237 (2015) (citation omitted).
13 This is also true when courts are “interpreting a regulation.” *Id.*

14 53. Here, the Department’s interpretation would produce an absurd result because an
15 applicant only qualifies for a permit transfer by engaging in an activity that is illegal without the
16 very permit they are seeking in the first place. Yet that is precisely the scenario the Department has
17 created under its current, newfound regulatory interpretation. To be an “owner or operator” of a
18 fishing vessel who meets the landing requirements under subsections (b)(3)–(b)(4), a fisherman
19 must already possess a general gill/trammel net permit. Likewise, self-evidently, a fisherman must
20 also possess a permit to meet subsection (b)(5)’s requirement that a fisherman “possess[] a permit”
21 before being qualified to receive a permit transfer. But for transfer applicants like Mr. Williams
22 who do not already possess a permit, meeting these requirements is a legal impossibility. Indeed,
23 those fisherman with no permit who must show proof of crewmember experience under subsection
24 174(b)(1) **and** prove they meet either subsection (b)(3), (b)(4), or (b)(5)—must necessarily illegally
25 fish without a permit to be “otherwise qualified” for a permit transfer under Fish & Game Code
26 § 8681.5. This interpretation is untenable, is absurd, and is erroneous.

27 54. The Department’s newfound interpretation would also absurdly render subsection
28 174(b)(1) redundant. 14 CCR § 174(b)’s qualifications all point to requiring fishermen to show

1 knowledge or experience in using gill or trammel nets. If fishermen must meet any of subsections
2 (b)(3)–(b)(5) to qualify for a permit transfer, they will either be an “owner or operator” or an
3 existing permittee. It would make no sense to require a vessel “owner or operator” who has landed
4 certain amounts of fish or an existing permittee to also prove “crewmember” experience to be
5 “otherwise qualified” for a gill/trammel net permit transfer. Thus, under the Department’s
6 interpretation, subsection (b)(1) would absurdly become a redundant part of the regulation.

7 55. That the 1982 regulatory change was a scrivener’s error also conforms with the
8 California Legislature’s intent to create a “limited entry” permitting regime in 1985 allowing for
9 permit transfers. This is not only shown by Fish & Game Code § 8681.5’s text specifically allowing
10 for transfers, but also by the legislative history surrounding the 1985 legislative amendment adding
11 the ability of fishermen to obtain permits by transfer. *See generally* Ex. C. Yet the Department’s
12 newfound regulatory interpretation phases out all gill/trammel net permits under § 8681.5 by
13 preventing anyone who does not possess a valid permit from obtaining a permit by transfer in the
14 future. Indeed, the result is that if fishermen like Mr. Williams cannot obtain a permit by transfer,
15 then general gill/trammel net permits will eventually phase out and the fishery will close. The
16 Department noted as much in its letter to PLF, when it stated, “it is true that except in unusual
17 circumstances, section 174 no longer provides a way for fishers to obtain a Permit.” Ex. H, p. 2.
18 This interpretation defies the California Legislature’s clear intent to allow for a limited entry
19 general gill/trammel net fishery through permit transfers.

20 56. That the 1982 regulatory change was a scrivener’s error is likewise confirmed by 14
21 CCR § 174(b)’s regulatory history. In its 1986 regulatory amendment changing the requirements
22 under subsection 174(b)(5)—four years after the “or” was inexplicably removed from subsection
23 174(b)(2)—the Committee’s “[d]escription of regulatory action” explicitly stated, “[t]o initially
24 qualify for a gill and trammel net permit, a fisherman is required to pass a proficiency examination;
25 **or** demonstrate participation in gill net fisheries by meeting specific landing requirements; **or**
26 demonstrate experience as a crewman on a gill net vessel.” Ex. D, p. 18 (emphasis added). And, on
27 information and belief, there has been no subsequent regulatory history showing the Department
28 ever construed the regulation in any other manner until denying Mr. Williams’s request. Indeed,

1 the Department has continuously applied 14 CCR § 174(b) as only requiring fishermen, like
2 Mr. Williams, to show they meet any of the enumerated qualifications in subsections 174(b)(1)–
3 (b)(5) to be “otherwise qualified” for a transfer permit under Fish & Game Code § 8681.5.

4 57. *Third*, alternatively, even if the 1982 regulatory amendment substituting a period for
5 “or”, Ex. B, p. 2, does not constitute a codification or scrivener’s error, the regulatory change
6 nonetheless created an ambiguity in the regulation. The Department’s newfound regulatory
7 interpretation is not a reasonable interpretation of that ambiguity.

8 58. A court’s “primary aim is to ascertain the intent of the administrative agency that
9 issued the regulation.” *Butts v. Bd. of Trustees of Cal. State Univ.*, 225 Cal. App. 4th 825, 835–36
10 (2014). “When that intent ‘cannot be discerned directly from the language of the regulation, [the
11 court] may look to a variety of extrinsic aids, including the purpose of the regulation, the legislative
12 history, public policy, and the regulatory scheme of which the regulation is a part.’” *Id.* (citation
13 omitted).

14 59. Here, 14 CCR § 174(b)’s plain meaning does not require a fisherman to meet both
15 subsection 174(b)(1) or (b)(2), and subsection (b)(3), or (b)(4), or (b)(5) before being “otherwise
16 qualified” for a permit transfer under Fish & Game Code § 8681.5. The regulation’s text does not
17 say “and” after subsection 174(b)(2), but merely includes a period.

18 60. For all the reasons stated in ¶¶ 52–56, the only reasonable interpretation of 14 CCR
19 § 174(b) is that a fisherman qualifies for a general gill/trammel net permit transfer if he meets any
20 one of the qualifications in subsections 174(b)(1)–(b)(5). Thus, even if the Court does not find that
21 a codification or scrivener’s error occurred in the 1982 amendment, the Court should still grant a
22 writ of mandate because the Department’s denial of Mr. Williams’s permit transfer request is based
23 on an unreasonable interpretation of 14 CCR § 174 and therefore violates its duty under Fish &
24 Game Code § 8681.5.

25 61. In sum, because 14 CCR § 174(b) only requires a fisherman like Mr. Williams to
26 meet subsection 174(b)(1) to qualify for a permit transfer, and because he met that requirement in
27 his transfer permit request, the Department’s denial of his request violates its duty under Fish &

28 ///

Game Code § 8681.5. This Court should issue a writ of mandate requiring the Department to process Mr. Williams's permit transfer request.

RELIEF REQUESTED

Petitioner Mr. Williams asks the Court to grant him the following:

1. A peremptory writ of mandate to Respondent directing and commanding it to process and approve his permit transfer request of a general gill/trammel net permit, permit number GGN083, from Mr. Michael McCorkle;
2. Damages according to proof, reasonably assessed at no less than \$10,000.00 under Cal. Code Civ. Proc. § 1095;
3. Attorneys' fees under Cal. Gov't Code § 800 or Cal. Code Civ. Proc. § 1021.5; and
4. For such other relief that the Court deems just and proper.

DATED: May 6, 2022.

Respectfully submitted,

PAIGE E. GILLIARD
DAMIEN M. SCHIFF
FRANK D. GARRISON

By: s/ Paige E. Gilliard
PAIGE E. GILLIARD
Attorneys for Petitioner

VERIFICATION

I, Christopher M. Williams, declare as follows:

I have read this Verified Petition for Peremptory Writ of Mandate and the facts stated are true to the best of my own knowledge.

I declare under penalty of perjury under California law that the foregoing is true and correct, and that this verification was executed this 6th day of May 2022, in Ventura, California.

DocuSigned by:

Christopher Max Williams

F1CD407ADED443F

CHRISTOPHER M. WILLIAMS

Ventura Superior Court Accepted through eDelivery submitted 05-06-2022 at 09:28:04 AM

Exhibit A

CASE #:56-2022-00565405-CU-WM-VTA RECEIPT #: 1220506D94273 DATE PAID : 05/6/22 4:23 PM TOTAL : 435.00 TYPE : EFT

FACE SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE OFFICE OF ADMINISTRATIVE LAW
AND WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11343.1)

RECEIVED FOR FILING

FEB 23 1981

Office of Administrative Law

ENDORSED
APPROVED FOR FILING

MAR 25 1981

Office of Administrative Law

Copy below is hereby certified to be a
true and correct copy of regulations
adopted, or amended, or an order of
repeal by:

FISH AND GAME COMMISSION
(Agency)

28001

(Billing Code)

Date of adoption, amendment, or repeal:

February 6, 1981

By:

Harold C. Cribbs
Executive Secretary
(Title)

FILED

In the office of the Secretary of State
of the State of California

MAR 25 1981

At 4:18 o'clock P. M.

MARCH FONG EU, Secretary of State

By: *Marjorie R. Hershberger*
Deputy Secretary of State

DO NOT WRITE IN THIS SPACE

The attached regulations which are being adopted, amended or repealed are contained in Title 14
of the California Administrative Code. Sec. 174, Division 1
Division, Part, Chapter, etc., affected by this order:

TYPE OF ORDER (Check as applicable)

- ☐ Emergency (Attach Finding of Emergency) ☒ Regular
☐ Certificate of Compliance ☐ Procedural and Organizational
☐ Certificate of Non-Compliance

CHECKLIST OF MANDATORY REQUIREMENTS

- ☒ One Certified Copy With Original Signature and
Six Copies of Order or Certificate of
Compliance Attached
☒ Regulation Summary (Form 690)
Attached (1 copy)
☒ Publication Date (in Notice Register) of
Notice for Attached Order or Certificate of
Compliance is 12/17/80
☒ Authority and Reference Citation Placed
Beneath Each Section in Attached Order
☒ Cost Statement Attached (Refer to SAM
Section 6050)

Effective Date:

☐ On _____ as Specified by Statute _____
_____, or☐ On _____, if Later Than 30 Days After
Filing With the Secretary of State
(Emergency regulations will be effective upon
filing with the Secretary of State; all other
regulations will be effective 30 days after
filing with the Secretary of State.)☐ Rule-Making File

BUILDING STANDARDS (Check one)

- ☒ These regulations contain no building standards under Health and Safety Code Sections 18900-
18915.
☐ These regulations do contain building standards under Health and Safety Code Sections 18900-
18915. The attached copy contains Building Standards approval.

CONFLICT OF INTEREST (Check one if attached are Conflict of Interest Regulations)

The attached Conflict of Interest Regulations contain the FPFC approval stamp and:

- ☐ Are to be published in full in the Administrative Code.
☐ Are to be codified by appropriate reference in the Administrative Code, and include a state-
ment as to where the full text may be obtained.

CAMPAIGN DISCLOSURES (Check if emergency Campaign Disclosure Regulations)

- ☐ These are emergency regulations pertaining to campaign disclosure law and were adopted by
unanimous vote of all board or commission members present at the regulation adoption proceeding.

Ex. A - 1

**FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE**
(Pursuant to Government Code Section 11380.1)

-1-

(1) Section 174 is added to read:

174. Permit to Use Gill Nets for Commercial Purposes.

(a) Permit Required.

(1) The owner or operator of a vessel using a gill net shall have obtained a valid gill net permit and shall be in possession of said permit when engaged in gill netting activities except as provided under subsection (i). Except as otherwise provided, it is unlawful to fish with a gill net unless a permittee is aboard the vessel.

(2) To Whom Issued. The department shall issue permits to the owner or operator of a currently registered commercial fishing vessel who has qualified pursuant to subsection (b).

(3) Where Issued. Permits shall be issued at department offices in Eureka, Menlo Park, Monterey, Long Beach and San Diego.

(b) Qualifications for the Permit. To qualify for a permit, an applicant shall:

(1) Have worked as a crewmember for at least 12 months on vessels using gill nets or trammel nets and shall have worked at least 180 days at sea on such vessels; or

(2) Pass a proficiency examination administered by the department. The proficiency examination shall include written and performance tests which demonstrate knowledge of the proper use of gill nets; or

(3) Prove to the director's satisfaction that as the owner or operator of a legally registered commercial fishing vessel, he has landed at least 10,000 pounds of fish during a 12-month period, or has landed fish during a 12-month period for which he was paid at least \$10,000. Only landings of fish caught by the use of gill nets shall be used to satisfy the catch requirements of this subsection; or

(4) Prove to the director's satisfaction that as the owner or operator of a legally registered commercial fishing vessel, he has landed at least 1,000 pounds of fish taken in gill nets in 4 of the 5 license years prior to the date of application; or

(5) Have possessed a permit issued pursuant to this section during the previous season and shall have complied with subsection (f) of these regulations. If a permittee has qualified for a permit pursuant to subsection (b)(5) during the four previous seasons, he may not qualify on the basis of previously possessing a permit, but may qualify pursuant to subsections (b)(1), (b)(2), (b)(3), or (b)(4).

DO NOT WRITE IN THIS SPACE

Ex. A - 2

**FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE**

(Pursuant to Government Code Section 11380.1)

-2-

(6) Only landings and crewmember experience occurring during the five-year period prior to the date of application shall be used to meet the requirements of subsection (b). The applicant shall supply documentation that he was a legally licensed commercial fisherman when he made the required landings or met the crewmember experience requirements. Crewmember experience shall be documented by fishing records submitted to the department as required by subsection (f), or by a notarized document signed by the owner or operator of vessels on which the applicant has completed the required experience. Landings of fish shall be verified by the submission of copies of landing receipts.

(c) Limitations of Permit. Permits are nontransferable. Not more than one permit shall be issued to any person.

(d) Duration of Permit. Except as otherwise provided, permits issued pursuant to these regulations, shall be in force from April 1 through March 31 of the following year, or if issued after the beginning of such term, for the remainder thereof.

(e) Cost of Permit. The fee for the permit shall be \$50.00.

(f) Records. If fish are landed under the terms of this permit, the permittee shall complete an accurate record of all gill net fishing activities under this permit on forms provided by the department. Such records shall be sent to the Fish and Game office in Long Beach, on a monthly basis and must be postmarked no later than the fifth day of the next month. Information required on these forms shall include, but not be limited to:

(1) Number of swordfish taken.

(2) Number of marlin taken.

(3) Number of white seabass taken.

(4) Names of crewmembers.

(5) Such other information as the department may request.

All fish records shall be deemed confidential.

(g) Conditions of Permit. Provisions of the Fish and Game Code relating to commercial fish except as modified by the provisions of these regulations, shall be a condition of all permits to be fully performed by the holders thereof, their agents, servants, employees, or those acting under their direction or control.

DO NOT WRITE IN THIS SPACE

**FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE**

(Pursuant to Government Code Section 11380.1)

-3-

(h) Revocation of Permits. A permit may be revoked or canceled by the commission for a period not to exceed one year from the date of revocation upon a conviction for a violation of a provision of Article 5, Chapter 3, Part 3, Division 6 of the Fish and Game Code, or any regulation authorized by this article, or the terms or conditions of this section by the holders thereof, their agents, servants, employees, or those acting under their direction and control.

(i) Exemptions from Permit. The owner or operator of a vessel operating under a permit issued pursuant to Sections 163 or 106, Title 14, CAC, is not required to possess the permit authorized by this section.

Authority: Section 8682, Fish and Game Code.

Reference: Sections 1050, 1700 and 8681-8683, Fish and Game Code.

DO NOT WRITE IN THIS SPACE

Ex. A - 4

OAL-4 (Interim)

FACE SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE OFFICE OF ADMINISTRATIVE LAW
AND WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11343.1)

RECEIVED FOR FILING

FEB 23 1981

Office of Administrative Law

ENDORSED

APPROVED FOR FILING

MAR 25 1981

Office of Administrative Law

Copy below is hereby certified to be a
true and correct copy of regulations
adopted, or amended, or an order of
repeal by:

FISH AND GAME COMMISSION
(Agency)28001
(Billing Code)

Date of adoption, amendment, or repeal:

February 6, 1981

By:

Harold C. Cribbs

Executive Secretary
(Title)

FILED
In the office of the Secretary of State
of the State of California

MAR 25 1981

At 4:18 o'clock P. M.

MARCH FONG EU, Secretary of State

By *Margie R. Hershberger*
Deputy Secretary of State

DO NOT WRITE IN THIS SPACE

DO NOT WRITE IN THIS SPACE

The attached regulations which are being adopted, amended or repealed are contained in Title 14
of the California Administrative Code.
Division, Part, Chapter, etc., affected by this order: Secs. 106, 107, 107.5 & 225.8, Div. 1

TYPE OF ORDER (Check as applicable)

- ☐ Emergency (Attach Finding of Emergency)
☐ Certificate of Compliance
☐ Certificate of Non-Compliance

- ☒ Regular
☐ Procedural and Organizational

CHECKLIST OF MANDATORY REQUIREMENTS

- ☒ One Certified Copy With Original Signature and
Six Copies of Order or Certificate of
Compliance Attached
☒ Regulation Summary (Form 690)
Attached (1 copy)
☒ Publication Date (in Notice Register) of
Notice for Attached Order or Certificate of
Compliance is 11/19/80
☒ Authority and Reference Citation Placed
Beneath Each Section in Attached Order
☒ Cost Statement Attached (Refer to SAM
Section 6050)

Effective Date:

☐ On _____ as Specified by Statute _____
or

☐ On _____, if Later Than 30 Days After
Filing With the Secretary of State
(Emergency regulations will be effective upon
filing with the Secretary of State; all other
regulations will be effective 30 days after
filing with the Secretary of State.)

☐ Rule-Making File

BUILDING STANDARDS (Check one)

- ☒ These regulations contain no building standards under Health and Safety Code Sections 18900-18915.
☐ These regulations do contain building standards under Health and Safety Code Sections 18900-18915. The attached copy contains Building Standards approval.

CONFLICT OF INTEREST (Check one if attached are Conflict of Interest Regulations)

The attached Conflict of Interest Regulations contain the FPPC approval stamp and:

- ☐ Are to be published in full in the Administrative Code.
☐ Are to be codified by appropriate reference in the Administrative Code, and include a statement as to where the full text may be obtained.

CAMPAIGN DISCLOSURES (Check if emergency Campaign Disclosure Regulations)

- ☐ These are emergency regulations pertaining to campaign disclosure law and were adopted by unanimous vote of all board or commission members present at the regulation adoption proceeding.

Ex. A - 5

CONTINUATION SHEET
**FOR FILING ADMINISTRATIVE REGULATIONS
 WITH THE SECRETARY OF STATE**
 (Pursuant to Government Code Section 11380.1)

-1-

(1) Section 106 is added to read:

106. Permits to Commercially Take Shark Using Drift Gill Nets.

(a) Permit Required.

(1) The owner or operator of a vessel using drift gill nets to take shark pursuant to Sections 8560-8570 of the Fish and Game Code, shall have obtained a valid shark gill net permit and shall be in possession of said permit when engaged in such activities.

(2) To Whom Issued. The department shall issue permits to the owner or operator of a currently registered vessel who has qualified for said permit pursuant to Section 8560, Fish and Game Code.

(3) Where Issued. Permits will be issued at department offices in Monterey, Long Beach and San Diego.

(b) Limitations of Permit. Permits are nontransferable. Not more than one permit shall be issued to any person. No permit shall be valid for more than one vessel.

(c) Duration of Permit. Except as otherwise provided, permits issued pursuant to these regulations shall be in force from April 1 through March 31 of the following year, or if issued after the beginning of such term, for the remainder thereof.

(d) Cost of Permit. The fee for the permit shall be \$150.00.

(e) Logbooks. Each permittee shall complete an accurate record of all gill net fishing activities at the end of each day of operation under this permit on forms provided by the department. Such records shall be sent to the Fish and Game office in Long Beach on a monthly basis and must be postmarked no later than the fifth day of the next month. Information required on these forms shall include, but not be limited to:

(1) Permittee did or did not actively fish for sharks using drift gill nets during the previous month.

(2) Number of swordfish taken.

(3) Number of marlin taken.

(4) Such other information as the department may request.

All such records shall be deemed confidential.

DO NOT WRITE IN THIS SPACE

Ex. A - 6

CONTINUATION SHEET
**FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE**
(Pursuant to Government Code Section 11380.1)

-2-

(f) Notification Procedure. A permittee who also possesses a swordfish permit issued pursuant to Section 107, Title 14, CAC, shall notify the department of intent to fish pursuant to either, or both, the shark gill net permit and/or the swordfish permit. Notification shall be made by personal appearance, by telephone, or by certified mail at the Long Beach office of the Department of Fish and Game, 350 Golden Shore, Long Beach, California 90802, (213) 590-5132 or (213) 590-5133, or at the San Diego office of the Department of Fish and Game, 1350 Front Street, Room 6042, San Diego, California 92101, (714) 237-7311. Notification shall be received during normal office hours, at least 24 hours prior to departure and shall be effective only on the vessel named.

If a permittee chooses not to fish under one of the permits, the permittee shall notify the department and surrender the permit by delivering or mailing it to one of the above mentioned department offices. If the permittee later declares his intent to fish under the previously surrendered permit, he may pick up the permit at the office where he surrendered it, or request that it be mailed to him by notifying the department.

(f) Season. The season for taking shark with drift gill net is April 1 through March 31.

(1) Emergency Closure of Season. The director may close the season on the basis of the incidental catch of swordfish or marlin pursuant to Sections 8566 and 8567, Fish and Game Code.

(2) Announcement of emergency closing date will be made not less than 48 hours, nor more than 56 hours in advance of the closing date. Announcement of the closing date shall be made by mailing a closure notice to each permit holder at his last address shown on the records of the department, and such mailing shall constitute notice to permit holders of such closing date. The permit holder shall keep the department informed in writing of his correct, current address.

(3) The director may reopen the season when the department determines that the catches of swordfish by fishermen operating under swordfish permits pursuant to Section 107 and/or the catches of marlin by sport fishermen is sufficient to meet the criteria established by Sections 8566 and 8567, Fish and Game Code.

(h) Gear Specifications. A gill net used under a drift gill net shark permit must have mesh size of 8 inches or greater, or twine larger than No. 18.

(i) Conditions of Permit. Provisions of the Fish and Game Code relating to commercial fish except as modified by the provisions of these regulations, shall be a condition of all permits to be fully performed by

DO NOT WRITE IN THIS SPACE

Ex. A - 7

**FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE**

(Pursuant to Government Code Section 11380.1)

-3-

the holders thereof, their agents, servants, employees, or those acting under their direction or control.

(j) Revocation of Permits. Any permit may be revoked and canceled by the commission upon breach or violation of any fish and game law or regulation or violation of the terms or conditions of the permit by the holders thereof, their agents, servants, employees or those acting under their direction and control.

Authority: Sections 8394 and 8682, Fish and Game Code.

Reference: Sections 1050, 1700, 7122 and 8560-8570, Fish and Game Code.

(2) Subsection (e) of Section 107 is amended to read:

(e) Each permittee shall complete an accurate record of all sword-fishing activities at the end of each day of operation under this permit on forms provided by the department. Such records shall be sent to the nearest Fish and Game office ~~on or before the fifth day of the month~~ on a monthly basis and must be postmarked no later than the fifth day of the next month. Information required on these forms shall include, but not be limited to:

(1) Permittee did or did not actively fish swordfish during the previous month;

(2) Location of fishing operations;

(3) Number of swordfish sighted;

(4) Number of swordfish attempted to be taken;

(5) Number of swordfish landed;

(6) Approximate weight of fish taken;

(7) Such other information as the department may request.

All such records shall be deemed confidential.

(3) Subsection (g) of Section 107 is renumbered subsection (h).

(4) Subsection (g) is added to Section 107 to read:

(g) Cost of Permit. The fee for the permit shall be \$150.00.

(5) Subsection (h) of Section 107 is renumbered subsection (i), and subsection (2)(A) of the former subsection (g) is amended to read:

DO NOT WRITE IN THIS SPACE

Ex. A - 8

CONTINUATION SHEET
**FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE**
(Pursuant to Government Code Section 11380.1)

-4-

(A) Aircraft registered pursuant to subsection ~~(g)~~(h)(2)(B) of these regulations may not be used within a ten mile radius of boats operated by permittees.

Authority: Section 8394, Fish and Game Code.

Reference: Sections 1050, 1700, 8394 and 8394.5, Fish and Game Code.

(6) Section 107.5 is repealed.

Authority: Section 8394, Fish and Game Code.

Reference: Sections 8394 and 8566, Fish and Game Code.

(7) Section 225.8 is added to read:

225.8 Report of Marlin Taken by Sport Fishermen. All marlin taken by sport fishermen shall be reported to their billfish club, or to the nearest office of the department. Catches shall be reported to the department not later than the first day and fifteenth day of each month on forms provided by the department.

For the purposes of these regulations, take shall be defined as landed, released, or tagged and released.

Authority: Sections 7122, Fish and Game Code.

Reference: Sections 1050, 1700, 7122 and 8567, Fish and Game Code.

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Ex. A - 9

OAL-4 (Interim)

FACE SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE OFFICE OF ADMINISTRATIVE LAW
AND WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11343.1)

RECEIVED FOR FILING

MAR 25 1981

Office of Administrative Law

ENDORSED
APPROVED FOR FILING

APR 24 1981

Office of Administrative Law

Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:

FISH AND GAME COMMISSION
(Agency)

28001
(Billing Code)

Date of adoption, amendment, or repeal:

March 6, 1981

By:

Harold C. Cribbs

Executive Secretary
(Title)

FILED
In the office of the Secretary of State
of the State of California

APR 24 1981
At 4:25 o'clock P.M.
MARCH FONG EU, Secretary of State
By Rhea Dredach
Deputy Secretary of State

DO NOT WRITE IN THIS SPACE

DO NOT WRITE IN THIS SPACE

The attached regulations which are being adopted, amended or repealed are contained in Title 14 of the California Administrative Code.
Division, Part, Chapter, etc., affected by this order: Sec. 671(i), Division 1

TYPE OF ORDER (Check as applicable)

- ☐ Emergency (Attach Finding of Emergency)
☐ Certificate of Compliance
☐ Certificate of Non-Compliance

- ☒ Regular
☐ Procedural and Organizational

CHECKLIST OF MANDATORY REQUIREMENTS

- ☒ One Certified Copy With Original Signature and Six Copies of Order or Certificate of Compliance Attached
☒ Regulation Summary (Form 690) Attached (1 copy)
☒ Publication Date (in Notice Register) of Notice for Attached Order or Certificate of Compliance is 1/21/81
☒ Authority and Reference Citation Placed Beneath Each Section in Attached Order
☒ Cost Statement Attached (Refer to SAM Section 6050)

Effective Date:

- ☐ On _____ as Specified by Statute _____, or
☐ On _____, if Later Than 30 Days After Filing With the Secretary of State (Emergency regulations will be effective upon filing with the Secretary of State; all other regulations will be effective 30 days after filing with the Secretary of State.)
☐ Rule-Making File

BUILDING STANDARDS (Check one)

- ☒ These regulations contain no building standards under Health and Safety Code Sections 18900-18915.
☐ These regulations do contain building standards under Health and Safety Code Sections 18900-18915. The attached copy contains Building Standards approval.

CONFLICT OF INTEREST (Check one if attached are Conflict of Interest Regulations)
The attached Conflict of Interest Regulations contain the FPPC approval stamp and:

- ☐ Are to be published in full in the Administrative Code.
☐ Are to be codified by appropriate reference in the Administrative Code, and include a statement as to where the full text may be obtained.

CAMPAIGN DISCLOSURES (Check if emergency Campaign Disclosure Regulations)

- ☐ These are emergency regulations pertaining to campaign disclosure law and were adopted by unanimous vote of all board or commission members present at the regulation adoption proceeding.

Ex. A - 10

S.D. 400A (8-71)

CONTINUATION SHEET

**FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE**

(Pursuant to Government Code Section 11380.1)

(1) Subsection (i) of Section 671 is amended to read:

(i) Class Gastropoda - Slugs, Snails

All species of slugs and land snails - Prohibited, except that with the concurrence of the appropriate county agricultural commissioners, *Rumina decollata* (decollate snail) may be transported and possessed in the counties of San Bernardino, Riverside, Imperial, Orange, Los Angeles, Ventura, Santa Barbara, and San Diego.

Authority: Sections 2116, 2118, 2118.5, 2120-2122 and 2150, Fish and Game Code.

Reference: Sections 2116-2191, Fish and Game Code.

DO NOT WRITE IN THIS SPACE

Ex. A - 11

Ventura Superior Court Accepted through eDelivery submitted 05-06-2022 at 09:28:04 AM

Exhibit B

CASE #:56-2022-00565405-CU-WM-VTA RECEIPT #: 1220506D94273 DATE PAID : 05/6/22 4:23 PM TOTAL : 435.00 TYPE : EFT

RECEIVED FOR FILING

FEB 19 4 22 PM '82

OFFICE OF
ADMINISTRATIVE LAW

ENDORSED
APPROVED FOR FILING

MAR 17 1982

Office of Administrative Law

Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:

FISH AND GAME COMMISSION

(Agency)

28001

(Billing Code)

Date of adoption, amendment, or repeal:

February 5, 1982

By:

Executive Secretary
(Title)

FILED
In the office of the Secretary of State
of the State of California

MAR 17 1982

At 4:50 o'clock P. M.

MARCH FONG EU, Secretary of State

By: Peggy M. Temple
Deputy Secretary of State

DO NOT WRITE IN THIS SPACE

DO NOT WRITE IN THIS SPACE

The attached regulations which are being adopted, amended or repealed are contained in Title 14
of the California Administrative Code.

Division, Part, Chapter, etc., affected by this order: Sec. 174, Division 1

TYPE OF ORDER (Check as applicable)

☐ Emergency (Attach Finding of Emergency)

☒ Regular

☐ Certificate of Compliance

☐ Procedural and Organizational

☐ Certificate of Non-Compliance

CHECKLIST OF MANDATORY REQUIREMENTS

☒ One Certified Copy With Original Signature and Six Copies of Order or Certificate of Compliance Attached

☒ Regulation Summary (Form 690) Attached (1 copy)

☒ Publication Date (in Notice Register) of Notice for Attached Order or Certificate of Compliance is 12/16/81

☒ Authority and Reference Citation Placed Beneath Each Section in Attached Order

☒ Cost Statement Attached (Refer to SAM Section 6050)

Effective Date:

☐ On _____ as Specified by Statute _____, or

☐ On _____, if Later Than 30 Days After Filing With the Secretary of State (Emergency regulations will be effective upon filing with the Secretary of State; all other regulations will be effective 30 days after filing with the Secretary of State.)

☐ Rule-Making File

BUILDING STANDARDS (Check one)

☒ These regulations contain no building standards under Health and Safety Code Sections 18900-18915.

☐ These regulations do contain building standards under Health and Safety Code Sections 18900-18915. The attached copy contains Building Standards approval.

CONFLICT OF INTEREST (Check one if attached are Conflict of Interest Regulations)

The attached Conflict of Interest Regulations contain the FPIC approval stamp and:

☐ Are to be published in full in the Administrative Code.

☐ Are to be codified by appropriate reference in the Administrative Code, and include a statement as to where the full text may be obtained.

CAMPAIGN DISCLOSURES (Check if emergency Campaign Disclosure Regulations)

☐ These are emergency regulations pertaining to campaign disclosure law and were adopted by unanimous vote of all board or commission members present at the regulation adoption proceeding.

Ex. B - 1

(1) The title of Section 174 is amended to read:

174. Permit to Use Gill Nets or Trammel Nets for Commercial Purposes.

(2) Subsection (a)(1) of Section 174 is amended to read:

(1) The owner or operator of a vessel using a gill net or trammel nets shall have obtained a valid gill net/trammel net permit and shall be in possession of said permit when engaged in gill netting or trammel netting activities except as provided under subsection (i). Except as otherwise provided, it is unlawful to fish with a gill net or trammel net unless a permittee is aboard the vessel.

(3) Subsection (b)(2) of Section 174 is amended to read:

(2) Pass a proficiency examination administered by the department. The proficiency examination shall include written and performance tests which demonstrate knowledge of the proper use of gill nets; or trammel nets.

(4) Subsection (b)(3) of Section 174 is amended to read:

(3) Prove to the director's satisfaction that as the owner or operator of a legally registered commercial fishing vessel, he has landed at least 10,000 pounds of fish during a 12-month period, or has landed fish during a 12-month period for which he was paid at least \$10,000. Only landings of fish caught by the use of gill nets or trammel nets shall be used to satisfy the catch requirements of this subsection; or

(5) Subsection (b)(4) of Section 174 is amended to read:

(4) Prove to the director's satisfaction that as the owner or operator of a legally registered commercial fishing vessel, he has landed at least 1,000 pounds of fish taken in gill nets or trammel nets in 4 of the 5 license years prior to the date of application; or

(6) The initial paragraph only of subsection (f) of Section 174 is amended to read:

(f) Records. If fish are landed under the terms of this permit, the permittee shall complete an accurate record of all gill net and trammel net fishing activities under this permit on forms provided by the department. Such records shall be sent to the Fish and Game office in Long Beach, on a monthly basis and must be postmarked no later than the fifth day of the next month. Information required on these forms shall include, but not be limited to:

Authority: Section 8682, Fish and Game Code.

Reference: Sections 8680-8683, Fish and Game Code.

RECEIVED FOR FILING

FEB 19 4 23 PM '82

OFFICE OF
ADMINISTRATIVE LAW

ENDORSED
APPROVED FOR FILING

MAR 17 1982

Office of Administrative Law

Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:

FISH AND GAME COMMISSION

(Agency)

28001

(Billing Code)

Date of adoption, amendment, or repeal:

February 5, 1982

By:

Harold B. Smith

Executive Secretary
(Title)

FILED

In the office of the Secretary of State
of the State of California

MAR 17 1982

At 4:50 o'clock P. M.

MARCH FONG EU, Secretary of State

By: *Reggie M. Semple*
Deputy Secretary of State

DO NOT WRITE IN THIS SPACE

DO NOT WRITE IN THIS SPACE

The attached regulations which are being adopted, amended or repealed are contained in Title 14
of the California Administrative Code.
Division, Part, Chapter, etc., affected by this order: Sec. 670.2, Division 1

TYPE OF ORDER (Check as applicable)

- ☐ Emergency (Attach Finding of Emergency)
☐ Certificate of Compliance
☐ Certificate of Non-Compliance

- ☒ Regular
☐ Procedural and Organizational

CHECKLIST OF MANDATORY REQUIREMENTS

- ☒ One Certified Copy With Original Signature and Six Copies of Order or Certificate of Compliance Attached
☒ Regulation Summary (Form 690) Attached (1 copy)
☒ Publication Date (in Notice Register) of Notice for Attached Order or Certificate of Compliance is 12/16/81
☒ Authority and Reference Citation Placed Beneath Each Section in Attached Order
☒ Cost Statement Attached (Refer to SAM Section 625C)

Effective Date:

- ☐ On _____ as Specified by Statute _____, or
☐ On _____, if Later Than 30 Days After Filing With the Secretary of State (Emergency regulations will be effective upon filing with the Secretary of State; all other regulations will be effective 30 days after filing with the Secretary of State.)

☐ Rule-Making File

BUILDING STANDARDS (Check one)

- ☒ These regulations contain no building standards under Health and Safety Code Sections 18900-18915.
☐ These regulations do contain building standards under Health and Safety Code Sections 18900-18915. The attached copy contains building Standards approval.

CONFLICT OF INTEREST (Check one if attached are Conflict of Interest Regulations)

The attached Conflict of Interest Regulations contain the FPAC approval stamp and:

- ☐ Are to be published in full in the Administrative Code.
☐ Are to be codified by appropriate reference in the Administrative Code, and include a statement as to where the full text may be obtained.

CAMPAIGN DISCLOSURES (Check if emergency Campaign Disclosure Regulations)

- ☐ These are emergency regulations pertaining to campaign disclosure law and were adopted by unanimous vote of all board or commission members present at the regulation adoption proceeding.

Ex. B - 3

(1) Subsection (a)(4)(H) is added to Section 670.2 to read:

(H) *Cirsium ciliolatum* (Ashland thistle)

(2) Subsection (a)(7)(E) is added to Section 670.2 to read:

(E) *Rorippa subumbellata* (Tahoe yellow cress)

(3) Subsections (a)(14)(G) and (H) are added to Section 670.2 to read:

(G) *Astragalus agnicidus* (Humboldt milkvetch)

(H) *Lotus dendroideus* var. *traskiae* (San Clemente Island broom)

(4) Subsection (a)(18)(D) is added to Section 670.2 to read:

(D) *Limnanthes douglasii* var. *sulphurea* (Point Reyes meadow foam)

(5) Subsection (a)(24)(F) is added to Section 670.2 to read:

(F) *Erigonum kelloggii* (Kellogg's buckwheat)

(6) Subsection (a)(29) is added to Section 670.2 to read:

(29) Caryophyllaceae (Pink Family)

(A) *Silene campanulata* ssp. *campanulata* (Red Mountain catchfly)

(7) Subsection (a)(30) is added to Section 670.2 to read:

(30) Rosaceae (Rose Family)

(A) *Cercocarpus traskiae* (Island mountain mahogany)

(8) Subsection (a)(31) is added to Section 670.2 to read:

(31) Rubiaceae (Madder Family)

(A) *Galium catalinense* ssp. *acrispum* (San Clemente Island bedstraw)

Authority: Sections 1904 and 1970, Fish and Game Code.

Reference: Sections 1900-1913, Fish and Game Code.

Ventura Superior Court Accepted through eDelivery submitted 05-06-2022 at 09:28:04 AM

Exhibit C

CASE #:56-2022-00565405-CU-WM-VTA RECEIPT #: 1220506D94273 DATE PAID : 05/6/22 4:23 PM TOTAL : 435.00 TYPE : EFT

ASSEMBLY BILL NO. 307 1985 REGULAR SESSION

CHAPTER 1002

AUTHOR WRIGHT

DATE RECEIVED 9-17 1985

LAST DAY TO ACT 9-29 1985

LC	IR	PUC
BTH	LEGAL	DPA
EQ	OLGA	ED
FIN	RES	
F&A	SCS	
H&W	YAC	

ACTION OF GOVERNOR 9-25 1985

CASE #:56-2022-00565405-CU-WM-VTA RECEIPT #: 1220506D94273 DATE PAID : 05/6/22 4:23 PM TOTAL : 43

Member of the Assembly
State Capitol, Room 4117
Sacramento, CA 95814

DEPARTMENT
Finance

BILL NUMBER
AB 307

AUTHOR
Wright

DATE LAST AMENDED
August 20, 1985

SUBJECT

This bill would: (1) make various technical and clarifying amendments to existing laws governing the taking of halibut and the commercial use of gill and trammel nets; (2) would require the Department of Fish and Game to submit a report by January 1, 1989; and, (3) allow new permits to be issued only to persons who applied prior to January 1, 1986.)

SUMMARY OF REASONS FOR SIGNATURE

According to the Department of Fish and Game, this bill is consistent with their efforts and responsibility to assess the effects of fishing with gill and trammel nets on current fish stocks and fisheries and would provide them sufficient time to prepare a report based on actual findings.)

FISCAL SUMMARY--STATE LEVEL

06-2022 at 09:00 AM

		SO	(Fiscal Impact by Fiscal Year)							
		LA	(Dollars in Thousands)							
		CO								
Department/Agency or Revenue Type	Code	RV	FC	1985-86	FC	1986-87	FC	1987-88	Code	Fund
Fish and Game	3600	SO	-----No Fiscal Impact-----							

ANALYSIS

A. Specific Findings

This bill makes various technical and clarifying amendments to existing laws governing the taking of halibut, and the use of gill and trammel nets.

In addition, this bill makes the following changes:

- o Prohibits the issuance of any new commercial gill or trammel net permits until January 1, 1990, except to persons who applied prior to January 1, 1986, but would allow renewal or transfer of existing permits.
- o Requires the Department of Fish and Game (DFG) to submit a report to the Legislature, by January 1, 1989, recommending a limited entry program for commercial gill or trammel net permits.

This bill contains an appropriate "Crimes and Infractions" disclaimer.

B. Fiscal Analysis

This bill has no State fiscal impact.

RECOMMENDATION

Sign the Bill.

Department Director

Date

SEP 19 1985

Principal Analyst
(283) W. E. Sauseda

Date

Program Budget Manager
LaFehus Stancell

Date

Governor's Office use

Position noted

Position approved

Position disapproved

by:

date:

ENROLLED BILL REPORT
CJ:1310A/8912D1

Form DF-44 (Rev 1/85 500 PK)

Ex. C - 2

ENROLLED BILL REPORT

	NO.	ISSUE DATE	BILL NUMBER
Local Cost	3	SEP 12 1985	AB 307
ESTIMATE	AUTHOR		DATE LAST AMENDED
Department of Finance	Wright		August 20, 1985

I. SUMMARY OF LOCAL IMPACT:

Revises provisions which regulate commercial fishing.

II. FISCAL SUMMARY--LOCAL LEVEL

	<u>1985-86</u>	<u>1986-87</u>	<u>1987-88</u>
	(Dollars in Thousands)		
Reimbursable Expenditures:	--	--	--
Non-Reimbursable Expenditures:	--	--	--
Revenues:	--	--	--

III. ANALYSIS:

Existing law prohibits the taking of California halibut less than a specified length unless it weighs a specified amount, except that the holder of a commercial fishing license may possess not more than 30 pounds of California halibut of less than the specified length or weight for noncommercial use if taken incidentally in commercial fishing. This bill would allow the holder of a commercial fishing license to possess not more than four undersized California halibut under that exception.

Under existing law, the use of gill or trammel nets to take fish for commercial purposes requires a permit from the Department of Fish and Game (DFG), and the use is restricted or prohibited by various statutes and regulations. This bill would, until January 1, 1990, prohibit the DFG from issuing gill or trammel net permits, but would authorize renewal of existing valid permits and would allow the transfer of permits by specified permittees.

Existing law does not limit the quantity of gill or trammel nets that a permittee may use, nor restrict the use of gill or trammel nets to take halibut. This bill would, commencing on August 15, 1986, between Ragged Point in San Luis Obispo County and Point Dume in Los Angeles County, prohibit a permittee from fishing for California halibut with a total of more than 1,000 fathoms of set gill or trammel net per boat per day with mesh size less than 8-1/2 inches in length.

(Continued)

LIST I

PREPARED

Date * REVIEWED

Date * APPROVED

Date

LB:1293A/8759D1

9/12/85*

9/12/85

Ex. C - 3

ENROLLED BILL REPORT

AUTHOR	DATE LAST AMENDED	BILL NUMBER
Wright	August 20, 1985	AB 307

III. ANALYSIS (continued)

Under Section 6(b) of Article XIII B of the State Constitution and statutory provisions of the Revenue and Taxation Code and the Government Code, any costs to a unit of local government which result from legislation defining a new crime or changing an existing definition of a crime are not "state mandated costs" and therefore are not reimbursable by the State. In addition, Section 17556(a)7 of the Government Code prohibits the Commission on State Mandates from considering any claims for reimbursement of costs from a local entity based on such legislation or on legislation which eliminated a crime or changed the penalty for a crime. It should be noted, however, that Section 2246.2 of the Revenue and Taxation Code requires that funding be included in the Governor's Budget to reimburse local entities for one-half of any additional detention and probation costs in excess of 1 percent of such costs in the preceding year incurred as the result of a bill which increased the penalty for a crime. Any local entity which believes that this bill falls within the purview of these provisions may, as provided by law, file a written request for these funds with the Department of Finance.

The "crimes and infractions" disclaimer in the bill is appropriate.

LR:1293A/8759D2

ENROLLED BILL REPORT

AGENCY RESOURCES	BILL NUMBER A.B. 307
DEPARTMENT, BOARD OR COMMISSION FISH AND GAME	AUTHOR WRIGHT

SUBJECT: Gill and Trammel Nets: Restrictions regarding the use of gill and trammel nets to take California halibut; a moratorium on the further issuance of general gill and trammel net permits; and reporting on the need for a limited entry program for the use of gill and trammel nets.

SUMMARY: Assembly Bill 307 would change (reduce) the commercial tolerance for undersized California halibut which could be taken each day for noncommercial use; establish a moratorium on the issuance of new general gill and trammel net permits until January 1, 1990; authorize the transfer of existing general gill and trammel net permits under specified circumstances; require the Department to submit a report to the legislature by January 1, 1989, assessing the need for a limited entry program for permits to use gill and trammel nets; and restrict the length and increase the minimum mesh size of gill and trammel nets used to take California halibut in specified waters.

ANALYSIS:**A. Detailed:**

Existing law (Fish and Game Code Section 8392) specifies a minimum size limit (22 inches) for California halibut taken for commercial purposes, and provides for a daily tolerance (30 pounds) of undersized California halibut which may be taken and retained by commercial fishermen for noncommercial (their own) use. Also, Fish and Game Code Section 8681 specifies that gill nets or trammel nets shall not be used for commercial purposes except under a revocable, nontransferable permit issued by the Department.

Existing law does not restrict the length or mesh size of gill nets used to capture California halibut south of Pigeon Point (San Mateo County). Existing law (Fish and Game Code Section 8724) authorizes the use of drift and set trammel nets in Fish and Game districts 10, 17, 18 and 19 (Sonoma-Mendocino County line south to the U.S.-Mexico border), provided the meshes are at least eight inches in length.

The following changes to existing law would be made by AB 307:

- a. SECTION 1 of the bill would amend Fish and Game Code Section 8392 to reduce the amount of undersized Cali-

Contact: Pete Bontadelli
5-5095

COMMENDATION:

SIGN THE BILL

DEPARTMENT HEAD <i>[Signature]</i>	DATE	AGENCY HEAD <i>[Signature]</i>	Ex. C - 5 DATE 9/12/89
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AB 307

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for California halibut which could be taken and retained by a commercial fisherman for noncommercial use, from 30 pounds (equivalent to about 7-8 fish) to 4 fish per day.

- b. SECTION 2 of the bill would add Fish and Game Code Section 8624, which would establish a minimum mesh size of 8-1/2 inches and a 1000-fathom length restriction regarding set gill and trammel nets used to take California halibut in ocean waters between Ragged Point (San Luis Obispo County) and Point Dume (Los Angeles County).
- c. SECTION 3 of the bill would add Section 8681.5 to the Fish and Game Code to:
 - 1. Establish a moratorium on the issuance of general gill and trammel net permits until January 1, 1990; except to those persons who applied prior to January 1, 1986, to take the examination for a general gill and trammel net permit and who pass that examination, and to those persons renewing an existing valid general gill and trammel net permit;
 - 2. Provide that a commercial fisherman who has "taken and landed fish for commercial purposes in at least 15 of the preceding 20 years", or "who becomes disabled" to transfer his/her existing general gill and trammel net permit to any person, otherwise qualified, pursuant to Fish and Game Code Section 8682;
 - 3. Authorize the Department to charge a fee to transfer a permit pursuant to the above provisions, not to exceed the actual cost of the permit (\$50.00); and
 - 4. Require the Department to submit a report to the Legislature on or before January 1, 1989, assessing the need for a limited entry program for the issuance of general permits to use gill or trammel nets for commercial purposes.
- B. Cost: Assembly Bill 307 contains a provision [Fish and Game Code subsection 8681.5(c)] which would authorize the Department to recover the costs (not to exceed \$50.00) of transferring a general gill and trammel net permit.

LEGISLATIVE HISTORY:

- 1. The author of AB 307 is also the official sponsor of the bill. AB 307 and its 1984 predecessor (AB 3707), which failed to pass the Assembly Water, Parks and Wildlife Committee on May 21, 1984, were promoted principally by private

AB 307

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recreational fishing interests from the Oxnard-Ventura-Santa Barbara area. Recreational fishermen are concerned that increased gill and trammel net fishing off southern California during recent years is adversely affecting the California halibut resource and nearshore recreational fisheries. Some members of the recreational fishing community (Ventura and Santa Barbara Counties) recently organized themselves into the Southern California Marine Resources Restoration Committee. It is our understanding that this organization is not fully supportive of the bill's current provisions because they believe they do not go far enough.

Also, AB 307 has the general support of southern California-based commercial gill and trammel net fishermen.

2. Investigations underway by the Department have not yet documented serious impacts to southern California marine recreational fishery resources and fisheries, as a result of increased nearshore gill and trammel net fishing. However, the Department is concerned with potential impacts of a continuing increase in the number of gill and trammel net permits [the number of general gill and trammel net permits issued annually in California has increased from 338 during the 1981-82 permit year (April 1-March 31), to approximately 900 during the 1984-85 permit year]. Therefore, the Department is supportive of a moratorium on the issuance of new gill and trammel net permits until our investigations regarding the potential impacts of gill and trammel nets can be completed.

Also, the Department recently completed a yield-per-recruit analysis of the California halibut commercial and recreational fisheries, which supports an increase of 4 inches (from 22" to 26") in the minimum size limit for California halibut taken commercially. Such an increase in the commercial minimum size limit for California halibut would be expected to increase both the commercial yield in pounds and the recreational yield in numbers of fish. The mesh size increase (to 8-1/2"), proposed in AB 307, should accomplish this to some degree.

VOTE:	Assembly	Senate
	Ayes: 79	Ayes: 37
	Noes: 0	Noes: 0

REASONS FOR RECOMMENDED POSITION:

The Department recommends that the Governor SIGN AB 307.

AB 307

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The passage of AB 307 will help resolve the current southern California gill and trammel net/resources/user group controversy and should result in an increased commercial (by weight) and recreational (by number) yield of California halibut. Also, a temporary moratorium on the issuance of new gill and trammel net permits would halt the increasing number of such permits issued in recent years. This should provide the Department time to complete its studies and assessment of the effects of increased gill and trammel net fishing effort on various fish stocks and fisheries, and to formulate appropriate measures to deal with any problems identified.

Ex. C - 8

THIRD READING

SENATE RULES COMMITTEE

Office of
Senate Floor Analyses
1100 J Street, Suite 305
445-6614

Bill No. AB 307
Author: Wright (R)
Amended: 8/20/85 in Senate
Vote Required: Majority

Committee Votes:

Senate Floor Vote:

COMMITTEE: NAT. RES. & WILDLF.		
BILL NO.: AB 307		
DATE OF HEARING: 7-17-85		
SENATORS:	AYE	NO
Garamendi		
Hart		
Marks	✓	
McCorquodale	✓	
Mello		
Nielsen	✓	
Seymour	✓	
Richardson (VC)	✓	
Presley (Ch)	✓	
TOTAL:	6	0

PLACED
ON FILE
PURSUANT
TO SENATE
RULE 28.8

Assembly Floor Vote: 79-0, p. 2907, 6/26/85

SUBJECT: Undersized halibut: gill and trammel net moratorium

SOURCE: Author

DIGEST: This bill:

1. Allows a commercial fisherman to keep only four incidentally taken undersized halibut and restricts the quantity and mesh size of gill and trammel nets used to take.
2. Places a moratorium on the issuance of new gill and trammel nets and allows an older permitted fisherman to transfer his permit to another qualified fisherman.
3. Also requires the Department to study and offer recommendations on a limited entry permit program for gill and trammel net fishing.

ANALYSIS: Existing law prohibits the commercial taking of California halibut less than 22 inches (unless it weighs a specified amount). However, existing law provides that a commercial fisherman may keep for his own use up to 30 pounds of undersize halibut taken incidentally.

Gill and trammel nets are used by commercial fishermen to trap or entangle certain species of fish, depending upon time of year, location, and mesh size. In Central and Northern California one of the primary concerns regarding gill and trammel nets is that marine birds and mammals may become entangled and drowned in these nets. In Southern California, the primary concern is the impact of the gill and trammel net fishing on both target and nontarget fish species that live close to shore.

CONTINUED
EX. C-9

According to the Department of Fish and Game, a temporary moratorium on the issuance of new gill and trammel net permits would halt the increasing number of such permits issued in recent years. The institution of the moratorium will provide the Department time to complete its assessment of the effects of increased fishing effort by gill and trammel nets on fish stocks and fisheries, and allow us to formulate appropriate measures to deal with any problems identified.

CP:lm 8/27/85 Senate Floor Analyses

Under existing law, the use of gill and trammel nets for commercial fishing purposes requires a permit from the Department. The permit fee is currently \$50. Existing law specifies restrictions on gill and trammel net mesh sizes for use in taking species, including California halibut, from the Mendocino-Sonoma County line to the Mexican border.

Existing law authorizes the Fish and Game Commission to adopt regulations regarding the issuance of gill and trammel net permits.

This bill limits to four the number of incidentally taken undersized halibut a commercial fisherman may keep daily for his use, rather than the 30 pound limit.

The bill prohibits, as of August 15, 1986, a gill or trammel net permittee from fishing for California halibut with more than 6,000 feet of net or with mesh sizes less than 8½ inches in ocean waters between Ragged Point (San Luis Obispo County) and Point Dume (Los Angeles County).

The bill places a moratorium on the issuance of new gill or trammel net permits until January 1, 1990 except for persons who applied and passed the permit exam before January 1, 1986. The Department would be allowed to renew existing permits. The moratorium is not fishery specific and therefore, would affect all set gill or trammel net fisheries.

The bill authorizes the transfer of a gill and trammel net fishing permit by an individual, who has commercially fished for 15 of the last 20 years, or is disabled and unable to make a living fishing, to another qualified fisherman. The fee for the transfer of a permit could not exceed the fee for a new permit.

The bill requires the Department to submit a report to the Legislature by January 1, 1989, which assesses the need for, and makes recommendations regarding, a limited entry permit program for gill and trammel net commercial fishing.

The moratorium and transfer provisions of this bill would sunset January 1, 1990.

FISCAL EFFECT: Appropriation: Yes Fiscal Committee: Yes Local: Yes

Legislative Analyst analysis not available.

SUPPORT: (Verified 8/26/85)

Department of Fish and Game
National Coalition for Marine Conservation

ARGUMENTS IN SUPPORT: According to the author, the changes proposed by this bill to current gill and trammel net mesh for California halibut taken commercially, and the proposed reduction in the daily tolerance of undersized (22 inch) California halibut taken commercially are intended to provide additional protection for California halibut, which are approximately 22-23 inches in length. It is anticipated that this change will improve both the commercial yield in weight of halibut taken while at the same time provide more fish larger than 22 inches for recreational anglers.

Ventura Superior Court Accepted through eDelivery submitted 05-06-2022 at 09:28:04 AM

Exhibit D

CASE #:56-2022-00565405-CU-WM-VTA RECEIPT #: 1220506D94273 DATE PAID : 05/6/22 4:23 PM TOTAL : 435.00 TYPE : EFT

86-0429-10

STATE OF CALIFORNIA
STD Form 400 (Rev. 8/85)

(See Instructions on Reverse)

Sec. 174

FACE SHEET

FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE OFFICE OF ADMINISTRATIVE LAW

CERTIFICATION: I hereby certify that the attached are true and correct copies of regulations adopted, amended or repealed by this agency and that the information specified on this Face Sheet is true and correct.

FISH AND GAME COMMISSION

(AGENCY)

AGENCY OFFICER WITH RULEMAKING AUTHORITY

April 29, 1986

Date:

ENDORSED FILED
IN THE OFFICE OF

MAY 13 4 47 PM 1986

MARCH FONG EU
SECRETARY OF STATE
OF CALIFORNIA

RECEIVED FOR FILING

1986 APR 29 PM 4:42

OFFICE OF
ADMINISTRATIVE LAW
ENDORSED

MAY 19 1986

For use of Office of Adm Law

For use by Secretary of State only

1. AGENCY CONTACT PERSON FOR THIS FILING
(See Instructions)

TITLE

TELEPHONE

Harold C. Cribbs, Executive Secretary

(916) 445-5708

2. Type of filing: (check one) ☒ 30-day Review ☐ Emergency ☐ Certificate of Compliance (Complete Part 4 below)
- ☐ Regulatory changes resulting from Govt. Code 11349.7 review (Complete Part 6 below)
- ☐ Nonsubstantive changes with nonregulatory effect ☐ Printing Error Correction

3. a. Specify California Administrative Code title and sections as follows:

Title 14

SECTIONS ADOPTED:

SECTIONS AMENDED:

174

SECTIONS REPEALED:

APPROVED

b. The following sections listed in 3a contain modifications to the text originally made available to the public:

4. CERTIFICATE OF COMPLIANCE (Government Code Section 11346.1(e): The above-named agency officer certifies that this agency complied with the provisions of Government Code Sections 11346.4-11346.8. (Check one)

- ☐ prior to the emergency adoption
- ☐ within 120 days of the effective date of the emergency adoption of the above-referenced regulations.

5. Is this filing a resubmittal of a previously disapproved or withdrawn regulation?

- ☒ No ☐ Yes, if yes, give date(s) of prior submittal(s) to OAL:

6. Is the filing submitted to carry out amendments or repeals identified in the statement of review completion submitted as a result of the agency's review of regulations administered by it as of June 30, 1980?

- ☒ No ☐ Yes, if yes, give date statement was submitted to OAL

7. If these regulations required prior review and approval or concurrence by any of the following agencies, check appropriate box(es)

- ☐ Fair Political Practices Commission (Include FPCC approval stamp) ☐ Building Standards Commission (Attach approval)
- ☐ State Fire Marshall (Attach approval) ☐ Department of Finance (Attach properly signed Std. 399)
- ☐ Other (SPECIFY AGENCY)

8. a. PUBLICATION DATE OF NOTICE IN CALIFORNIA
ADMINISTRATIVE NOTICE REGISTER

January 24, 1986

b. DATE OF FINAL AGENCY ACTION

April 7, 1986

c. DATES OF AVAILABILITY OF MODIFIED REGULATION(S) (GOVT.
CODE SEC. 11346.8(c))

9. Effective date of regulatory changes: (See Government Code Section 11346.2 and instructions on reverse)

- a. ☒ Effective 30th day after filing with the Secretary of State.
- b. ☐ Effective upon filing with the Secretary of State.
- c. ☐ Effective on _____ as required or allowed by the following statute(s):
- d. ☐ Effective on _____ (Designate effective date *earlier than* 30 days after filing with the Secretary of State pursuant to Govt. Code Sect. 11346.2(d).)
- Attach request demonstrating good cause for early effective date. Request subject to OAL approval.
- e. ☐ Effective on _____ (Designate effective date *later than* the normal effective date for the type of order filed.)

Ex. D - 1

cc: Dir
MRD-HQ
WLP

Regions 1-5
(WLP)

Ventura Superior Court Accepted through eDelivery submitted 05-06-2022 at 09:28:04 AM

CASE #: 56-2022-00565405-CU-WM-VTA RECEIPT #: 1220506D94273 DATE PAID : 05/6/22 4:23 PM TOTAL : 435.00 TYPE : EFT

(1) Subsection (b)(5) of Section 174, Title 14, CAC, is amended to read:

(5) Have possessed a permit issued pursuant to this section during the previous season and shall have complied with subsection (f) of these regulations. ~~If a permittee has qualified for a permit pursuant to subsection (b)(5) during the four previous seasons, he may not qualify on the basis of previously possessing a permit, but may qualify pursuant to subsection (b)(1), (b)(2), (b)(3), or (b)(4).~~

(2) Subsections (j) and (k) of Section 174, Title 14, CAC, are repealed:

~~(j) Areas with restricted fishing:~~

~~(1) Gill nets and trammel nets shall not be used in that portion of District 10 between the shore and a line extending due south magnetic from the Point Reyes light station, Marin County, out to the 10 fathom contour, from there the line follows the 10 fathom contour east, north and then southeast to the whistle buoy (Duxbury) located approximately 2 miles southeast (153 degrees magnetic) from Duxbury Point, Marin County, then in a straight line easterly (approximately 097 degrees magnetic) to the bell buoy (Bonita) located approximately one mile southwest (209 degrees magnetic) of Point Bonita, Marin County; then in a straight line south (176 degrees magnetic) to a point in about 15 fathoms of water where it intersects a line extending due west magnetic from Mussel Rock, San Mateo County (Mussel Rock is located approximately 2 miles north of the Pacifica Pier); then south following the 15 fathom contour to a point in 15 fathoms of water where it intersects a line extending due west magnetic from Miramontes Point, San Mateo County; then east on that line to the 10 fathom contour and then in a southerly direction following the 10 fathom contour to a point on a line extending due west magnetic from Pigeon Point; then due east to the shoreline at Pigeon Point.~~

~~(2) Depth referenced in subsection (j)(1) shall be those existing at mean high water.~~

~~(k) Subsections (j) and (k) shall be effective through October 16, 1983.~~

Authority: Sections ~~8664.5~~ and 8682, Fish and Game Code.

Reference: Sections 1050, 1700, 8568, 8680, 8681, 8682 and 8683, Fish and Game Code.

(1) Subsection (b)(5) of Section 174, Title 14, CAC, is amended to read:

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(2) Subsections (j) and (k) of Section 174, Title 14, CAC, are repealed:

~~(j) Areas with restricted fishing:~~

~~(1) Gill nets and trammel nets shall not be used in that portion of District 10 between the shore and a line extending due south magnetic from the Point Reyes light station, Marin County, out to the 10-fathom contour; from there the line follows the 10 fathom contour east, north and then southeast to the whistle buoy (Duxbury) located approximately 2 miles southeast (153-degrees magnetic) from Duxbury Point, Marin County, then in a straight line easterly (approximately 097 degrees magnetic) to the bell buoy (Bonita) located approximately one mile southwest (209 degrees magnetic) of Point Bonita, Marin County; then in a straight line south (176 degrees magnetic) to a point in about 15 fathoms of water where it intersects a line extending due west magnetic from Mussel Rock, San Mateo County (Mussel Rock is located approximately 2 miles north of the Pacifica Pier); then south following the 15-fathom contour to a point in 15 fathoms of water where it intersects a line extending due west magnetic from Miramontes Point, San Mateo County; then east on that line to the 10-fathom contour and then in a southerly direction following the 10-fathom contour to a point on a line extending due west magnetic from Pigeon Point; then due east to the shoreline at Pigeon Point.~~

~~(2) Depth referenced in subsection (j)(1) shall be those existing at mean high water.~~

~~(k) Subsections (j) and (k) shall be effective through October 16, 1983.~~

Authority: Sections 8664.6 and 8682, Fish and Game Code.

Reference: Sections 1050, 1700, 8568, 8680, 8681, 8682 and 8683, Fish and Game Code.

FACE SHEET

FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE OFFICE OF ADMINISTRATIVE LAW

CERTIFICATION: I hereby certify that the attached are true and correct copies of regulations adopted, amended or repealed by this agency and that the information specified on this Face Sheet is true and correct.

FISH AND GAME COMMISSION

(AGENCY)

AGENCY OFFICER WITH RULEMAKING AUTHORITY

April 29, 1986

Date:

ENDORSED FILED
IN THE OFFICE OF

MAY 19 4 47 PM 1986

MARCH FONG EU
SECRETARY OF STATE
OF CALIFORNIA

For use by Secretary of State only

A.

RECEIVED FOR FILING

1986 APR 29 PM 4:42

OFFICE OF
ADMINISTRATIVE LAW
ENDORSED

MAY 19 1986

For use of Office of Adm Law

1 AGENCY CONTACT PERSON FOR THIS FILING
(See instructions)

Harold C. Cribbs, Executive Secretary

TITLE

TELEPHONE

(916) 445-5708

2 Type of filing, (check one) ☒ 30-day Review ☐ Emergency ☐ Certificate of Compliance (Complete Part 4 below)☐ Regulatory changes resulting from Govt. Code 11349.7 review (Complete Part 6 below)☐ Nonsubstantive changes with nonregulatory effect ☐ Printing Error Correction

3 a. Specify California Administrative Code title and sections as follows:

Title 14

SECTIONS ADOPTED:

SECTIONS AMENDED:

174

SECTIONS REPEALED:

APPROVED

b. The following sections listed in 3a contain modifications to the text originally made available to the public:

4 CERTIFICATE OF COMPLIANCE (Government Code Section 11346.1(e): The above-named agency officer certifies that this agency complied with the provisions of Government Code Sections 11346.4-11346.8. (Check one)

☐ prior to the emergency adoption☐ within 120 days of the effective date of the emergency adoption of the above-referenced regulations.

5 Is this filing a resubmittal of a previously disapproved or withdrawn regulation?

☒ No ☐ Yes, if yes, give date(s) of prior submittal(s) to OAL:

6 Is the filing submitted to carry out amendments or repeals identified in the statement of review completion submitted as a result of the agency's review of regulations administered by it as of June 30, 1980?

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7 If these regulations required prior review and approval or concurrence by any of the following agencies, check appropriate box(es).

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(Include FPCC approval stamp)☐ Building Standards Commission
(Attach approval)☐ State Fire Marshall (Attach approval)☐ Department of Finance (Attach properly signed Std. 399)☐ Other

(SPECIFY AGENCY)

a. PUBLICATION DATE OF NOTICE IN CALIFORNIA
ADMINISTRATIVE NOTICE REGISTER

January 24, 1986

b. DATE OF FINAL AGENCY ACTION

April 7, 1986

c. DATES OF AVAILABILITY OF MODIFIED REGULATION(S) (GOVT.
CODE SEC. 11346.8(c))

Effective date of regulatory changes: (See Government Code Section 11346.2 and instructions on reverse)

a. ☒ Effective 30th day after filing with the Secretary of State.b. ☐ Effective upon filing with the Secretary of State.c. ☐ Effective on _____ as required or allowed by the following statute(s):d. ☐ Effective on _____ (Designate effective date *earlier than* 30 days after filing with the Secretary of State pursuant to Govt. Code Sect. 11346.2(d).)

Attach request demonstrating good cause for early effective date. Request subject to OAL approval.

e. ☐ Effective on _____ (Designate effective date *later than* the normal effective date for the type of order filed.)cc: Dir
THRD-HQ
WLPRegions 1-5
(WLP)

Ex. D-4

Vehutur Superior Court Accepted through eDelivery submitted 05/06/2022 at 09:28:04 AM

CASE #56-2022-00565405-CU-WM-VTA RECEIPT #: 1220506D94273 DATE PAID : 05/06/22 4:23 PM TOTAL : 435.00 TYPE : EFT

(1) Subsection (b)(5) of Section 174, Title 14, CAC, is amended to read:

(5) Have possessed a permit issued pursuant to this section during the previous season and shall have complied with subsection (f) of these regulations. ~~If a permittee has qualified for a permit pursuant to subsection (b)(5) during the four previous seasons, he may not qualify on the basis of previously possessing a permit, but may qualify pursuant to subsection (b)(1), (b)(2), (b)(3), or (b)(4).~~

(2) Subsections (j) and (k) of Section 174, Title 14, CAC, are repealed:

~~(j) Areas with restricted fishing.~~

~~(1) Gill nets and trammel nets shall not be used in that portion of District 10 between the shore and a line extending due south magnetic from the Point Reyes light station, Marin County, out to the 10 fathom contour; from there the line follows the 10 fathom contour east, north and then southeast to the whistle buoy (Duxbury) located approximately 2 miles southeast (153 degrees magnetic) from Duxbury Point, Marin County, then in a straight line easterly (approximately 097 degrees magnetic) to the bell buoy (Bonita) located approximately one mile southwest (209 degrees magnetic) of Point Bonita, Marin County; then in a straight line south (176 degrees magnetic) to a point in about 15 fathoms of water where it intersects a line extending due west magnetic from Mussel Rock, San Mateo County (Mussel Rock is located approximately 2 miles north of the Pacifica Pier); then south following the 15 fathom contour to a point in 15 fathoms of water where it intersects a line extending due west magnetic from Miramontes Point, San Mateo County; then east on that line to the 10 fathom contour and then in a southerly direction following the 10 fathom contour to a point on a line extending due west magnetic from Pigeon Point; then due east to the shoreline at Pigeon Point.~~

~~(2) Depth referenced in subsection (j)(1) shall be those existing at mean high water.~~

~~(k) Subsections (j) and (k) shall be effective through October 16, 1983.~~

Authority: Sections 8664.6 and 8682, Fish and Game Code.

Reference: Sections 1050, 1700, 8568, 8680, 8681, 8682 and 8683, Fish and Game Code.

STATE OF CALIFORNIA
STD Form 400 (Rev. 8/85)

(See Instructions on Reverse)

FACE SHEET

FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE OFFICE OF ADMINISTRATIVE LAW

CERTIFICATION: I hereby certify that the attached are true and correct copies of regulations adopted, amended or repealed by this agency and that the information specified on this Face Sheet is true and correct.

ENDORSED FILED
IN THE OFFICE OF

MAY 13 4 47 PM 1986

MARCH FONG EU
SECRETARY OF STATE
OF CALIFORNIA

For use by Secretary of State only

FISH AND GAME COMMISSION

(AGENCY)

AGENCY OFFICER WITH RULEMAKING AUTHORITY

Date: April 29, 1986

Date:

AGENCY CONTACT PERSON FOR THIS FILING
(See Instructions)

Harold C. Cribbs, Executive Secretary

TITLE

TELEPHONE

(916) 445-5708

- 2 Type of filing, (check one) ☒ 30-day Review ☐ Emergency ☐ Certificate of Compliance (Complete Part 4 below)
- ☐ Regulatory changes resulting from Govt. Code 11349.7 review (Complete Part 6 below)
- ☐ Nonsubstantive changes with nonregulatory effect ☐ Printing Error Correction

a. Specify California Administrative Code title and sections as follows:

Title 14

SECTIONS ADOPTED:

SECTIONS AMENDED:

174

SECTIONS REPEALED:

APPROVED

b. The following sections listed in 3a contain modifications to the text originally made available to the public:

CERTIFICATE OF COMPLIANCE (Government Code Section 11346.1(e): The above-named agency officer certifies that this agency complied with the provisions of Government Code Sections 11346.4-11346.8. (Check one)

- ☐ prior to the emergency adoption
- ☐ within 120 days of the effective date of the emergency adoption of the above-referenced regulations.

Is this filing a resubmittal of a previously disapproved or withdrawn regulation?

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Is the filing submitted to carry out amendments or repeals identified in the statement of review completion submitted as a result of the agency's review of regulations administered by it as of June 30, 1980?

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- ☐ Fair Political Practices Commission (Include FPPC approval stamp) ☐ Building Standards Commission (Attach approval)
- ☐ State Fire Marshall (Attach approval) ☐ Department of Finance (Attach properly signed Std. 399)
- ☐ Other (SPECIFY AGENCY)

a. PUBLICATION DATE OF NOTICE IN CALIFORNIA
ADMINISTRATIVE NOTICE REGISTER

January 24, 1986

b. DATE OF FINAL AGENCY ACTION

April 7, 1986

c. DATES OF AVAILABILITY OF MODIFIED REGULATION(S) (GOVT.
CODE SEC. 11346.8(c))

Effective date of regulatory changes: (See Government Code Section 11346.2 and instructions on reverse)

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- b. ☐ Effective upon filing with the Secretary of State.
- c. ☐ Effective on _____ as required or allowed by the following statute(s):
- d. ☐ Effective on _____ (Designate effective date *earlier than* 30 days after filing with the Secretary of State pursuant to Govt. Code Sect. 11346.2(d).)
- Attach request demonstrating good cause for early effective date. Request subject to OAL approval.
- e. ☐ Effective on _____ (Designate effective date *later than* the normal effective date for the type of order filed.)

cc: Dir
MRD-HQ
WLPRegions 1-5
(WLP)

Ex. D-6

Ventura Superior Court Accepted Through eDelivery submitted 05-06-2022 at 09:28:04 AM

CASE #56-2022-00565405-CU-WM-VTA RECEIPT #: 1220506D94273 DATE PAID : 05/06/22 4:23 PM TOTAL : 435.00 TYPE : EFT

(1) Subsection (b)(5) of Section 174, Title 14, CAC, is amended to read:

(5) Have possessed a permit issued pursuant to this section during the previous season and shall have complied with subsection (f) of these regulations. ~~If a permittee has qualified for a permit pursuant to subsection (b)(5) during the four previous seasons, he may not qualify on the basis of previously possessing a permit, but may qualify pursuant to subsection (b)(1), (b)(2), (b)(3), or (b)(4).~~

(2) Subsections (j) and (k) of Section 174, Title 14, CAC, are repealed:

~~(j) Areas with restricted fishing:~~

~~(1) Gill nets and trammel nets shall not be used in that portion of District 10 between the shore and a line extending due south magnetic from the Point Reyes light station, Marin County, out to the 10-fathom contour; from there the line follows the 10 fathom contour east, north and then southeast to the whistle buoy (Duxbury) located approximately 2 miles southeast (153-degrees magnetic) from Duxbury Point, Marin County, then in a straight line easterly (approximately 097 degrees magnetic) to the bell buoy (Bonita) located approximately one mile southwest (209 degrees magnetic) of Point Bonita, Marin County; then in a straight line south (176 degrees magnetic) to a point in about 15 fathoms of water where it intersects a line extending due west magnetic from Mussel Rock, San Mateo County (Mussel Rock is located approximately 2 miles north of the Pacifica Pier); then south following the 15-fathom contour to a point in 15 fathoms of water where it intersects a line extending due west magnetic from Miramonte Point, San Mateo County; then east on that line to the 10-fathom contour and then in a southerly direction following the 10-fathom contour to a point on a line extending due west magnetic from Pigeon Point; then due east to the shoreline at Pigeon Point.~~

~~(2) Depth referenced in subsection (j)(1) shall be those existing at mean-high water.~~

~~(k) Subsections (j) and (k) shall be effective through October 16, 1983.~~

Authority: Sections ~~8664.6~~ and 8682, Fish and Game Code.

Reference: Sections 1050, 1700, 8568, 8680, 8681, 8682 and 8683, Fish and Game Code.

CALIFORNIA OFFICE OF ADMINISTRATIVE LAW

MAY 27 1986
SACRAMENTO, CALIFORNIA

In re:)

AGENCY: FISH AND GAME)
COMMISSION)NOTICE OF APPROVAL OF
REGULATORY ACTION
(Government Code
section 11349.3)REGULATORY ACTION: Amendment)
of section 174 of Title 14 of)
the California Administrative)
Code)

OAL File No. 86-0429-10

SUMMARY OF REGULATORY ACTION

On April 29, 1986, the Fish and Game Commission (Commission) submitted to the Office of Administrative Law (OAL) the above referenced regulatory filing consisting of 2 pages of regulations and 50 rulemaking pages. This regulatory filing concerns the areas in which the use of gill and trammel nets are allowed and deletes the requirement that permit holders requalify every five years.

OFFICE OF ADMINISTRATIVE LAW DECISION

OAL approves the proposed amendment of section 174 of Title 14 of the California Administrative Code.

REASONS FOR THE DECISION

All legal requirements were met by the Commission in this rule-making file.

May 20, 1986
Date

Marc D. Remis
MARC D. REMIS
Staff Counsel

For: LINDA STOCKDALE BREWER
Director

Original to: Harold C. Cribbs
Executive Secretary

GEORGE DEUKMEJIAN
GOVERNOR



COMMISSIONERS
William A. Burke, Ed. D., President
Brentwood
Brian J. Kahn, Vice President
Santa Rosa
Abel C. Galletti
Rancho Palos Verdes
Albert C. Taucher
Long Beach
Robert A. Bryant
Yuba City

STATE OF CALIFORNIA

Fish and Game Commission

HAROLD C. CRIBBS
EXECUTIVE SECRETARY
1416 NINTH STREET
SACRAMENTO, CALIFORNIA 95814
(916) 445-5708

May 12, 1986

Ms. Linda Stockdale Brewer
Director
Office of Administrative Law
1414 K Street, Suite 600
Sacramento, CA 95814

Dear Linda:

I would like to direct your attention to an error in the authority sections in our filing of April 29, 1986 which amended Section 174, Title 14, CAC. Section 8664.6 was repealed by the Stats. of 1985, Chapter 50, and we should not have used it as an authority citation. Would you please delete any reference to Section 8664.6 in the copies of the order submitted to you. If you have any problems with this, please let me know.

Sincerely,

Harold C. Cribbs
Executive Secretary

HCC:tkf

86-0429-10

STATE OF CALIFORNIA
STD Form 400 (Rev. 8/85)

FACE SHEET

(See Instructions on Reverse)

RECEIVED FOR FILING

1986 APR 29 PM 4:42

OFFICE OF
ADMINISTRATIVE LAWFOR FILING ADMINISTRATIVE REGULATIONS
WITH THE OFFICE OF ADMINISTRATIVE LAW

CERTIFICATION: I hereby certify that the attached are true and correct copies of regulations adopted, amended or repealed by this agency and that the information specified on this Face Sheet is true and correct.

FISH AND GAME COMMISSION

(AGENCY)

AGENCY OFFICER WITH RULEMAKING AUTHORITY

April 29, 1986

For use of Office of Adm Law

Date:

For use by Secretary of State only

AGENCY CONTACT PERSON FOR THIS FILING
(See instructions)

TITLE

TELEPHONE

Harold C. Cribbs, Executive Secretary

(916) 445-5708

- Type of filing, (check one) ☒ 30-day Review ☐ Emergency ☐ Certificate of Compliance (Complete Part 4 below)
- ☐ Regulatory changes resulting from Govt. Code 11349.7 review (Complete Part 6 below)
- ☐ Nonsubstantive changes with nonregulatory effect ☐ Printing Error Correction

a. Specify California Administrative Code title and sections as follows:

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SECTIONS AMENDED:

174

SECTIONS REPEALED:

b. The following sections listed in 3a contain modifications to the text originally made available to the public:

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- ☐ State Fire Marshall (Attach approval) ☐ Department of Finance (Attach properly signed Std. 399)
- ☐ Other _____ (SPECIFY AGENCY)

a. PUBLICATION DATE OF NOTICE IN CALIFORNIA
ADMINISTRATIVE NOTICE REGISTER

January 24, 1986

b. DATE OF FINAL AGENCY ACTION

April 7, 1986

c. DATES OF AVAILABILITY OF MODIFIED REGULATION(S) (GOVT.
CODE SEC. 11346.8(c))

Effective date of regulatory changes: (See Government Code Section 11346.2 and instructions on reverse)

- a. ☒ Effective 30th day after filing with the Secretary of State.
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- c. ☐ Effective on _____ as required or allowed by the following statute(s): _____
- d. ☐ Effective on _____ (Designate effective date *earlier than* 30 days after filing with the Secretary of State pursuant to Govt. Code Sect. 11346.2(d).)
- Attach request demonstrating good cause for early effective date. Request subject to OAL approval. **Ex. D - 10**
- e. ☐ Effective on _____ (Designate effective date *later than* the normal effective date for the type of order filed.)

Ventura Superior Court Accepted through e-Delivery submitted 05-06-2022 at 09:28:04 AM

CASE #: 56-2022-00565405-CU-WM-VTA RECEIPT #: 1220506D94273 DATE PAID : 05/06/22 4:23 PM TOTAL : 435.00 TYPE : EFT

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STATE OF CALIFORNIA
STD Form 400 (Rev. 8/85)

FACE SHEET

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FISH AND GAME COMMISSION

(AGENCY)

AGENCY OFFICER WITH RULEMAKING AUTHORITY

April 29, 1986

For use of Office of Adm Law

Date:

For use by Secretary of State only

AGENCY CONTACT PERSON FOR THIS FILING
(See instructions)

TITLE

TELEPHONE

Harold C. Cribbs, Executive Secretary

(916) 445-5708

- Type of filing, (check one) ☒ 30-day Review ☐ Emergency ☐ Certificate of Compliance (Complete Part 4 below)
- ☐ Regulatory changes resulting from Govt. Code 11349.7 review (Complete Part 6 below)
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- e. ☐ Effective on _____ (Designate effective date *later than* the normal effective date for the type of order filed.)

Ventura Superior Court Accepted through e-Delivery submitted 05-06-2022 at 09:28:04 AM

CASE #: 56-2022-00563405-CU-WM-VTA RECEIPT #: 1220506D94273 DATE PAID : 05/06/22 4:23 PM TOTAL : 435.00 TYPE : EFT

FISCAL IMPACT STATEMENT (REGULATIONS AND ORDERS)

STD 399 (9/85)

STATE OF CALIFORNIA

SEE SAM SECTION 6055 FOR INSTRUCTIONS

AGENCY Fish and Game Commission	CONTACT PERSON Harold C. Cribbs, Exec. Secretary	PHONE NUMBER (916) 445-5708
TITLE/DESCRIPTION OF REGULATION/ORDER Section 174, Title 14, CAC		

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 5 and complete if necessary)


- ☐ 1. Additional expenditures of approximately \$ _____ annually which are reimbursable by the State pursuant to Section 2231 of the Revenue and Taxation Code. Funding for this reimbursement:
- ☐ a. is provided in (Item _____, Budget Act of _____) or (Chapter _____, Statutes of _____)
- ☐ b. will be requested in the _____ (FISCAL YEAR) Governor's Budget for appropriation in Budget Act of _____
- ☐ 2. Additional expenditures of approximately \$ _____ annually which are not reimbursable by the State pursuant to Section 2231 of the Revenue and Taxation Code because this regulation:
- ☐ a. implements the Federal mandate contained in _____
- ☐ b. implements the court mandate set forth by the _____ court in the case of _____ vs. _____
- ☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____ (DATE) election;
- ☐ d. is issued only in response to a specific request from the _____, which are the only local entity(s) affected;
- ☐ e. is more appropriately financed from the _____ (FEES, REVENUE, ETC.) authorized by Section _____ of the _____ Code;
- ☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.
- ☐ 3. Savings of approximately \$ _____ annually.
- ☐ 4. No additional costs or savings because this regulation makes only technical, nonsubstantive or clarifying changes to current law and regulations.
- ☒ 5. No fiscal impact exists because this regulation does not affect any local entity or program.

B. FISCAL EFFECT ON STATE GOVERNMENT (Indicate appropriate boxes 1 through 3 and complete if necessary)

- ☐ 1. Additional expenditures of approximately \$ _____ annually. It is anticipated that State agencies will:
- ☐ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request supplemental funding by means of "Budget Change Proposals" for the _____ fiscal year.
- ☐ 2. Savings of approximately \$ _____ annually.
- ☒ 3. No fiscal impact exists because this regulation does not effect any State agency or program.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS (Indicate appropriate boxes 1 through 3 and complete if necessary)

- ☐ 1. Additional expenditures of approximately \$ _____ annually.
- ☐ 2. Savings of approximately \$ _____ annually.
- ☒ 3. No fiscal impact exists because this regulation does not affect any federally funded State program or agency.

SIGNATURE 	TITLE Executive Secretary
--	-------------------------------------

DEPARTMENT OF FINANCE APPROVAL/CONCURRENCE Agency _____	PROGRAM BUDGET MANAGER - DOF _____ Date _____
---	---

Ex. D - 13

(1) Subsection (b)(5) of Section 174, Title 14, CAC, is amended to read:

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(2) Subsections (j) and (k) of Section 174, Title 14, CAC, are repealed:

~~(j) Areas with restricted fishing:~~

~~(1) Gill nets and trammel nets shall not be used in that portion of District 10 between the shore and a line extending due south magnetic from the Point Reyes light station, Marin County, out to the 10-fathom contour, from there the line follows the 10 fathom contour east, north and then southeast to the whistle buoy (Duxbury) located approximately 2 miles southeast (153-degrees magnetic) from Duxbury Point, Marin County, then in a straight line easterly (approximately 097 degrees magnetic) to the bell buoy (Bonita) located approximately one mile southwest (209 degrees magnetic) of Point Bonita, Marin County; then in a straight line south (176 degrees magnetic) to a point in about 15 fathoms of water where it intersects a line extending due west magnetic from Mussel Rock, San Mateo County (Mussel Rock is located approximately 2 miles north of the Pacifica Pier); then south following the 15-fathom contour to a point in 15 fathoms of water where it intersects a line extending due west magnetic from Miramontes Point, San Mateo County; then east on that line to the 10-fathom contour and then in a southerly direction following the 10-fathom contour to a point on a line extending due west magnetic from Pigeon Point; then due east to the shoreline at Pigeon Point.~~

~~(2) Depth referenced in subsection (j)(1) shall be those existing at mean high water.~~

~~(k) Subsections (j) and (k) shall be effective through October 16, 1983.~~

Authority: Sections 8664.6 and 8682, Fish and Game Code.

Reference: Sections 1050, 1700, 8568, 8680, 8681, 8682 and 8683, Fish and Game Code.

State of California
CALIFORNIA FISH AND GAME COMMISSION

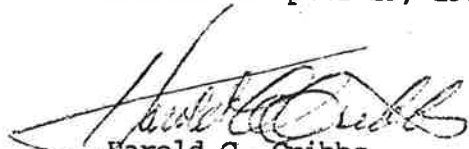
(Amend Section 174, Title 14, CAC,
Re: Permits to Use Gill Nets or Trammel Nets
for Commercial Purposes.)

File Index

File No. 86-174

1. Initial Statement of Purpose.
2. Agenda, Agenda Analysis, Consent Calendar and Minutes of January 3, 1986 Meeting - Item No. 26.
3. Notice.
4. Pre-adoption Statement.
5. Agenda, Agenda Analysis, Consent Calendar and Minutes of April 7, 1986 Meeting - Item No. 13.
6. Final Statement and Updated Informative Digest.
7. Copy of Order.

I, Harold C. Cribbs, Executive Secretary of the Fish and Game Commission, hereby swear that the rulemaking file of which the contents are listed above is complete, and that the record was closed on April 29, 1986 and that the attached file is complete.

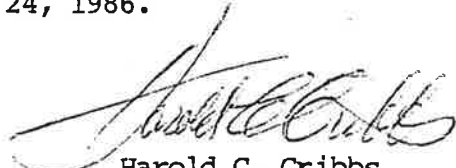


Harold C. Cribbs
Executive Secretary

☐ The Fish and Game Commission hereby certifies that it has complied with the provisions of Section 11346.8(c) of the Government Code and Section 44, Title 1, California Administrative Code, by providing the public with copies of the full text of the regulation changes in Section , Title 14, California Administrative Code, at least 15 calendar days prior to the adoption of said regulations.

☒ The Fish and Game Commission hereby certifies that it has complied with the provisions of Government Code Section 11346.4(a)(1) through (4) regarding the mailing of notice of the proposed action which was mailed to interested persons on January 24, 1986.

Date: April 29, 1986


Harold C. Cribbs
Executive Secretary

State of California

The Resources Agency

Memorandum

To : Executive Secretary
Fish and Game Commission

CALIFORNIA
FISH AND GAME
COMMISSION

DEC 19 9 08 AM '85: December 13, 1985

From : Department of Fish and Game - Director

Subject: Agenda Item for January 3, 1986 Fish and Game Commission Meeting.

Consideration of Department request to publish notice of intent to amend Section 174(b)(5), Title 14, CAC, re: Permits to Use Gill Nets or Trammel Nets for Commercial Purposes.

The proposed amendment to Section 174, Title 14, CAC, will eliminate the provision requiring gill and trammel net permittees to requalify for subject permits after four consecutive years of renewal. The provision requiring requalification after four years is considered unnecessary and burdensome on both the fishermen and the Department.

Attached is a Pre-publication of Notice for the proposed change to subject regulation.

Robert C. Parnell
for Jack C. Parnell
Director

Attachment

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
STATEMENT OF PURPOSE FOR REGULATORY ACTION
(Pre-publication of Notice)

(Amend Section 174, Title 14, CAC, re: Permits to Use Gill Nets or Trammel Nets for Commercial Purposes)

- I. Date of statement: November 22, 1985
- II. Date(s) and Location(s) of Scheduled Hearing(s):
- (a) Notice Hearing: Date: January 3, 1986
Location: Ventura, California
 - (b) Action Hearing: Date: April 4, 1986
Location: San Diego, California

III. Description of regulatory action:

- (a) Description of Problem or Condition That Regulation Change is Intended to Change.

To initially qualify for a gill and trammel net permit, a fisherman is required to pass a proficiency examination; or demonstrate participation in gill net fisheries by meeting specific landing requirements; or demonstrate experience as a crewman on a gill net vessel. The problem that the proposed amendment to subsection 174(b)(5), Title 14, CAC, seeks to address, is the provision requiring gill and trammel net permittees to requalify for the gill and trammel net permit after renewing their permit for four consecutive years (gill and trammel net permits are issued on an annual basis). The requirement to requalify for the gill and trammel net permit after four years of renewal is unnecessary and burdensome on gill net fishermen. Also, the proposed amendments would help streamline the administration and issuance of general gill net/trammel net permits which would benefit both the fishing industry and the Department.

The existing provisions of subsections 174(j) and (k) of Title 14, CAC, prohibit the use of gill nets and trammel nets in portions of Fish and Game District 10 between Point Reyes lighthouse, Marin County and Pigeon Point, San Mateo County, through October 16, 1983. These provisions which were adopted as temporary emergency measures are proposed for deletion as they are now expired and no longer in effect.

- (b) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary.

The purpose of the proposed regulation change is to eliminate the requirement that gill and trammel net permittees must requalify for a permit every fifth year, and to eliminate the expired provisions restriction on the use of gill nets and trammel nets in portions of Fish and Game District 10.

The intent of establishing regulations controlling the issuance of permits to use gill and trammel nets was to promote the orderly development of the gill and trammel net fishery. The specific intent of subsection 174(b)(5), Title 14, CAC, requiring gill and trammel net permittees to requalify every fifth year, was to help assure that gill and trammel net permittees would remain knowledgeable in the use and construction of gill and trammel nets, and also to discourage permit renewal by individuals not actively fishing under authority of the permit.

Permits to use gill and trammel nets were first required of all commercial fishermen wishing to use these nets during the 1981-82 license year (April 1-March 31). Next year (1986) will be the first year that current gill and trammel net permittees will be faced with having to renew their gill and trammel net permits through the requalifying process, by either passing a proficiency examination administered by the Department, meeting specific landing requirements, or demonstrating experience as a crewman on a gill net vessel.

Several factors now argue for eliminating the requirement for periodically requalifying for the gill and trammel net permit at five-year intervals. The intent of subsection 174(b)(5), Title 14, CAC, to help assure that fishermen remain knowledgeable in the proper use and construction of gill and trammel nets, is being accomplished through continued Department communication of changes in gill and trammel net laws and regulations, with gill and trammel net permittees, and commercial fishermen's organizations. As an example, the Department has mailed copies of major enacted gill and trammel net legislation to all holders of gill and trammel net permits during recent years, and regularly discusses gill and trammel net issues with leaders of organizations representing gill and trammel net fishermen. These fishermen's organizations include the California Gill Netters Association, the Pacific Coast Federation of Fishermen's Associations, and the Vietnamese Fishermen's Association of America. Also, these organizations are included on the Fish and Game Commission's agenda mailing list.

Also, since the gill and trammel net permit regulations were first adopted in March of 1981, the number of gill and trammel net permits issued statewide has increased from 338 to 896 today, nearly a threefold increase. Therefore, the number of fishermen required to expend additional time and effort to requalify for the gill and trammel net permit every fifth year under subsection 174(b)(5), Title 14, CAC, and also the administrative costs associated with requalifying these fishermen in future years will be greater than originally anticipated. In this regard, permittees who wish to requalify for the gill and trammel net permit based upon specific landings made during the four previous years, and who have not maintained records of their landings, will have to obtain such records from the Department at a cost of \$20.00 per year (cost of computer searching Department landing

records for one year), or \$80.00 for four years. Permittees wishing to requalify for the permit by taking and passing the gill and trammel net proficiency examination (possibly 350 fishermen during 1986, and 200 each year thereafter), must divert the time needed for scheduling and taking the examination, from their fishing activities. Elimination of the requalifying provisions for the gill and trammel net permit would eliminate the need for these additional expenditures of time and money for both fishermen and the Department.

In addition, legislation was passed this year (AB 307, Chapter 1002, Statutes 1985), which places a temporary moratorium until 1990, on the further issuance of new gill and trammel net permits, pending completion of a Department report to the Legislature, assessing the need for a limited entry gill and trammel net fishery. Included in the report will be an assessment of whether, and what kinds of, requalifying criteria should be required in the future. Repeal of the current periodic five-year requalifying provision will still provide for, and simplify, renewal of gill and trammel net permits while the moratorium is in place, and during the time the Department assesses the need for future requalifying provisions.

In summary, 1986 will be the first year gill and trammel net permittees will be required to requalify after renewing this permit for the previous four years. Elimination of the requalifying requirements of subsection 174(b)(5), Title 14, CAC, is supported by the fact that gill and trammel net permittees are remaining knowledgeable in the proper use and construction of gill and trammel nets, through continued communication with the Department regarding changes in laws and regulations and other issues related to the use of gill and trammel nets. Also, elimination of requalifying requirements will ease the burden and cost of requalifying for fishermen who have renewed their gill and trammel net permits for the past four years and wish to renew their permits again in 1986. Eliminating this requirement will also help streamline and simplify the permit renewal process for permittees and the Department and, at the same time, will result in no reduction in protections for resources exploited by gill and trammel nets. In addition, the provisions of AB 307 provide the opportunity to investigate whether, and in what form, permit requalifying criteria should exist in the future.

(c) Authority and Reference Sections From Fish and Game Code for Regulation.

Authority: Sections 8664.6 and 8682, Fish and Game Code.

Reference: Sections 1050, 1700, 8568, 8680, 8681, 8682 and 8683, Fish and Game Code.

(d) Specific Technology or Equipment Required by Regulatory Change:

No new or specific technologies or equipment associated with proposed regulation.

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(e) Identification of Reports or Documents Supporting Regulation Change:

None.

IV. Description of Alternatives to Regulatory Action:

(a) Major Alternatives to Regulatory Action:

No Change. If Section 174(b)(5) is not amended to eliminate the five-year requalifying requirements for a permit to use gill and trammel nets, approximately 350 permittees, who have held a valid permit since 1982, will need to meet landing, experience or examination requirements before obtaining the permit for 1986-87. In addition, approximately two hundred more permittees will need to meet the same requirements in each subsequent year, as they complete four consecutive years as a holder of a gill and trammel net permit.

V. Mitigation Measures Required by Regulatory Action.

No negative impacts of the proposed change are anticipated.

VI. Economic Impact of Regulatory Action.

The Commission has determined that the proposed changes: (1) will have no effect on housing costs; (2) do not mandate any programs upon local agencies or school districts; (3) involve no increased costs or savings to any local agency or school district, state agency or federal funding to the state; (4) will have no adverse economic impact on small business; and (5) involve no significant cost to private persons or entities.

174. Permit to Use Gill Nets or Trammel Nets for Commercial Purposes.

(a) Permit Required.

(1) The owner or operator of a vessel using a gill net or trammel nets shall have obtained a valid gill net/trammel net permit and shall be in possession of said permit when engaged in gill netting or trammel netting activities except as provided under subsection (i). Except as otherwise provided, it is unlawful to fish with a gill net or trammel net unless a permittee is aboard the vessel.

(2) To Whom Issued. The department shall issue permits to the owner or operator of a currently registered commercial fishing vessel who has qualified pursuant to subsection (b).

(3) Where Issued. Permits shall be issued at department offices in Eureka, Menlo Park, Monterey, Long Beach and San Diego.

(b) Qualifications for the Permit. To qualify for a permit, an applicant shall:

(1) Have worked as a crewmember for at least 12 months on vessels using gill nets or trammel nets and shall have worked at least 180 days at sea on such vessels; or

(2) Pass a proficiency examination administered by the department. The proficiency examination shall include written and performance tests which demonstrate knowledge of the proper use of gill nets or trammel nets.

(3) Prove to the director's satisfaction that as the owner or operator of a legally registered commercial fishing vessel, he has landed at least 10,000 pounds of fish during a 12-month period, or has landed fish during a 12-month period for which he was paid at least \$10,000. Only landings of fish caught by the use of gill nets or trammel nets shall be used to satisfy the catch requirements of this subsection; or

(4) Prove to the director's satisfaction that as the owner or operator of a legally registered commercial fishing vessel, he has landed at least 1,000 pounds of fish taken in gill nets or trammel nets in 4 of the 5 license years prior to the date of application; or

(5) Have possessed a permit issued pursuant to this section during the previous season and shall have complied with subsection (f) of these regulations. ~~If a permittee has qualified for a permit pursuant to subsection (b)(5) during the four previous seasons, he may not qualify on the basis of previously possessing a permit, but may qualify pursuant to subsection (b)(1), (b)(2), (b)(3), or (b)(4).~~

(6) Only landings and crewmember experience occurring during the five-year period prior to the date of application shall be used to meet the requirements of subsection (b). The applicant shall supply documentation that he was a legally licensed commercial fisherman when he made the required landings or met the crewmember experience requirements. Crewmember experience shall be documented by fishing records submitted to the department as required by subsection (f), or by a notarized document signed by the owner or operator of vessels on which the applicant has completed the required experience. Landings of fish shall be verified by the submission of copies of landing receipts.

(c) Limitations of Permit. Permits are nontransferable. Not more than one permit shall be issued to any person.

(d) Duration of Permit. Except as otherwise provided, permits issued pursuant to these regulations, shall be in force from April 1 through March 31 of the following year, or if issued after the beginning of such term, for the remainder thereof.

(e) Cost of Permit. The fee for the permit shall be \$50.00.

(f) Records. If fish are landed under the terms of this permit, the permittee shall complete an accurate record of all gill net and trammel net fishing activities under this permit on forms provided by the department. Such records shall be sent to

-2-

the Fish and Game office in Long Beach, on a monthly basis and must be postmarked no later than the fifth day of the next month. Information required on these forms shall include, but not be limited to:

- (1) Number of swordfish taken.
- (2) Number of marlin taken.
- (3) Number of white seabass taken.
- (4) Names of crewmembers.
- (5) Such other information as the department may request.

All fish records shall be deemed confidential.

(g) Conditions of Permit. Provisions of the Fish and Game Code relating to commercial fish except as modified by the provisions of these regulations, shall be a condition of all permits to be fully performed by the holders thereof, their agents, servants, employees or those acting under their direction or control.

(h) Revocation of Permits. A permit may be revoked or canceled by the commission for a period not to exceed one year from the date of revocation upon a conviction for a violation of a provision of Article 5, Chapter 3, Part 3, Division 6 of the Fish and Game Code, or any regulation authorized by this article, or the terms or conditions of this section by the holders thereof, their agents, servants, employees, or those acting under their direction and control.

(i) Exemptions from Permit. The owner or operator of a vessel operating under a permit issued pursuant to Section 163, Title 14, CAC, is not required to possess the permit authorized by this section.

~~(j) Areas with restricted fishing:~~

~~(1) Gill nets and trammel nets shall not be used in that portion of District 10 between the shore and a line extending due south magnetic from the Point Reyes light station, Marin County, out to the 10-fathom contour; from there the line follows the 10-fathom contour east, north and then southeast to the whistle buoy (Duxbury) located approximately 2 miles southeast (153 degrees magnetic) from Duxbury Point, Marin County, then in a straight line easterly (approximately 097 degrees magnetic) to the bell buoy (Bonita) located approximately one mile southwest (209 degrees magnetic) of Point Bonita, Marin County; then in a straight line south (176 degrees magnetic) to a point in about 15 fathoms of water where it intersects a line extending due west magnetic from Mussel Rock, San Mateo County (Mussel Rock is located approximately 2 miles north of the Pacifica Pier); then south following the 15-fathom contour to a point in 15 fathoms of water where it intersects a line extending due west magnetic from Miramontes Point, San Mateo County; then east on that line to the 10-fathom contour and then in a southerly direction following the 10-fathom contour to a point on a line extending due west magnetic from Pigeon Point; then due east to the shoreline at Pigeon Point.~~

~~(2) Depth referenced in subsection (j)(1) shall be those existing at mean high water.~~

~~(k) Subsections (j) and (k) shall be effective through October 16, 1983.~~

Authority: Sections 8664.6 and 8682, Fish and Game Code.

Reference: Sections 1050, 1700, 8568, 8680, 8681, 8682 and 8683, Fish and Game Code.

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Informative Digest

Existing regulation [Section 174(b)(5), Title 14, CAC] provides for the renewal of permits to use gill and trammel nets where a permittee possessed a valid permit during the previous permit year (April 1 through March 31) and provides for requalifying for this permit after four consecutive years of renewal. Section 174(b)(5) specifies that prior to the fifth consecutive permit year, a gill and trammel net permittee must requalify for the gill and trammel net permit in one of four ways:

1) demonstrate to the director that he has 12 months of experience (with 180 days spent at sea), as a crewman aboard a gill or trammel net vessel during the previous five years; 2) pass a proficiency examination in the use of gill and trammel nets; 3) demonstrate that, as owner or operator of a legally registered commercial fishing vessel, he landed at least 10,000 pounds or \$10,000 worth of fish taken in gill and trammel nets during the past five years; or 4) demonstrate that as the owner or operator of a legally registered commercial fishing vessel, he landed at least 1,000 pounds of fish taken in gill and trammel nets in 4 of the 5 license years prior to the date of application.

The proposed change to Section 174(b)(5), Title 14, CAC, would eliminate the requirement that gill and trammel net permittees need to requalify for a permit every five years.

The existing provisions of subsections 174(j) and (k) prohibit the use of gill nets and trammel nets in portions of Fish and Game District 10 between Point Reyes lighthouse, Marin County and Pigeon Point, San Mateo County, through October 16, 1983. This provision would be deleted as it is no longer valid.

174
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State of California
FISH AND GAME COMMISSION
(916) 445-5708

Meeting of
January 3, 1986
8:00 a.m.

County of Ventura
Hall of Administration
Lower Plaza Assembly Room*
800 So. Victoria
Ventura, California

AGENDA

ALL MEETINGS OPEN TO THE PUBLIC

EXECUTIVE SESSION (NOT OPEN TO THE PUBLIC)

PURSUANT TO THE AUTHORITY OF GOVERNMENT CODE SECTION 11126, THE COMMISSION WILL MEET IN CLOSED EXECUTIVE SESSION. THE PURPOSE OF THIS EXECUTIVE SESSION IS TO CONSIDER JOB PERFORMANCE OF COMMISSION STAFF.

DISCUSSION ITEMS

1. READING AND APPROVAL OF MINUTES OF OCTOBER 31-NOVEMBER 1 AND DECEMBER 6, 1985 MEETINGS.
2. RECEIPT OF DEPARTMENT INFORMATIONAL ITEMS.
3. AMENDMENT OF COMMISSION POLICY RE: "STOCKING WATERS WHERE ANGLERS PAY ACCESS FEES" TO INCREASE ACCESS FEES TO \$3.50 PER CAR AND \$0.85 PER PERSON.
4. REQUEST OF ANNEKE JANS HABERSAAT, GRANTS PASS, OREGON, FOR WAIVER OF SECTION 550(B)(7), TITLE 14, CAC, RE: HARVEST OF YERBA SANTA LEAVES ON TEHAMA WILDLIFE AREA, TEHAMA COUNTY.
5. REQUESTS OF RANDY KANN, JEREMIAH O'BRIEN, NEAL TOBIN AND JOE NUNGAREY FOR EXPERIMENTAL GEAR PERMITS TO USE SET GILL NETS DURING DAYLIGHT HOURS ONLY WITHIN THE 15-FATHOM GILL NET CLOSURE ALONG THE CENTRAL COAST.
6. REQUEST OF STEVEN FITZ AND JAMES BUSKIRK, EL GRANADA, FOR EXPERIMENTAL GEAR PERMIT TO USE A SCOTTISH SEINE TO TAKE KINGFISH AND STARRY FLOUNDER IN OCEAN WATERS BETWEEN POINT REYES AND WADDELL CREEK.
7. REQUEST OF BOYD REBER, SAN DIEGO, FOR A PERMIT WHICH WOULD AUTHORIZE HIM TO USE A GILL NET TO TAKE SOUPFIN SHARK AT SAN MIGUEL ISLAND ECOLOGICAL RESERVE, SANTA BARBARA COUNTY.
8. AMENDMENT OF SECTION 135, TITLE 14, CAC, RE: TRANSPORTATION, POSSESSION AND SALE OF IMPORTED STURGEON, STRIPED BASS, STEELHEAD TROUT AND SHAD.

* This facility is accessible to persons with disabilities.

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9. ADOPTION OF SECTION 231, TITLE 14, CAC, RE: SPORT CAUGHT FISH PROCESSOR'S PERMITS.
10. ADOPTION OF SECTION 402, TITLE 14, CAC, RE: TAKING OF MOUNTAIN LIONS CAUSING DAMAGE.
11. RECEIPT OF DEPARTMENT PROPOSAL TO STUDY THE EFFECT OF MOUNTAIN LION CONTROL ON A SIERRA NEVADA DEER POPULATION.
12. DISCUSSION OF DEPARTMENT'S ANTLERLESS AND EITHER SEX DEER HUNT PROPOSALS.
13. DISCUSSION OF DEPARTMENT'S MOUNT PINOS, TEJON, LOS ANGELES, SAN BERNARDINO MOUNTAIN, SAN JACINTO/SANTA ROSA, SANTA ANA MOUNTAINS, SANTA BARBARA/VENTURA, PIUTE, TULE RIVER AND KERN RIVER DEER HERD MANAGEMENT PLANS. (NO PUBLIC TESTIMONY - WRITTEN COMMENTS WILL BE ACCEPTED IN THE COMMISSION OFFICE UNTIL 5:00 P.M. DECEMBER 27, 1985.)
14. SCHEDULING OF DISCUSSIONS OF REMAINING DEER HERD MANAGEMENT PLANS.
15. RECEIPT OF DEPARTMENT REPORT RE: USE OF STEEL SHOT AT TULE LAKE AND LOWER KLAMATH NATIONAL WILDLIFE REFUGES.
16. RECEIPT OF DEPARTMENT'S MANAGEMENT PLAN FOR SAN JACINTO WILDLIFE AREA, RIVERSIDE COUNTY.
17. APPROVAL OF COMMISSION'S LEGISLATIVE PROGRAM FOR 1986.
18. REVIEW OF PROCEDURES FOR CONSIDERING CAPTIVE RAPTOR BREEDING PROPOSALS.
19. RECEIPT OF LEGISLATIVE PROPOSAL FROM CALIFORNIA URCHIN DIVER'S ASSOCIATION.
20. RECEIPT OF DEPARTMENT REPORT RE: STATUS OF CALIFORNIA CONDOR CAPTIVE BREEDING AND RADIO TELEMETRY PROGRAMS.
21. REVIEW OF REPORT FROM NATIONAL COALITION FOR MARINE CONSERVATION RE: "AN ECONOMIC ASSESSMENT OF MARINE RECREATIONAL FISHING IN SOUTHERN CALIFORNIA."
22. REQUEST BY DEPARTMENT FOR AUTHORIZATION TO ISSUE EXPERIMENTAL GEAR PERMITS TO HARVEST CARP, GOLDFISH, BLACKFISH AND HITCH FOR COMMERCIAL PURPOSES AT CLEAR LAKE, LAKE COUNTY.
23. RECEIPT OF REPORT RE: OUTBREAK OF WHIRLING DISEASE IN STEELHEAD TROUT AT COLEMAN NATIONAL FISH HATCHERY.

CONSENT CALENDAR

24. AMENDMENT OF SECTION 630, TITLE 14, CAC, RE: ADDING THE BOBELAINE ECOLOGICAL RESERVE, SUTTER COUNTY, TO THE LIST OF DESIGNATED ECOLOGICAL RESERVES AND TO PROVIDE REGULATIONS GOVERNING ITS USE.
25. REQUEST TO PUBLISH NOTICE OF INTENT TO AMEND SECTION 4.25, TITLE 14, CAC, TO PROHIBIT THE USE OF FIN FISH FOR BAIT IN STAFFORD LAKE, MARIN COUNTY.

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26. AUTHORIZATION TO PUBLISH NOTICE OF INTENT TO AMEND SECTION 174, TITLE 14, CAC, RE: PERMITS TO USE GILL NETS OR TRAMMEL NETS FOR COMMERCIAL PURPOSES.
27. AUTHORIZATION TO PUBLISH NOTICE OF INTENT TO AMEND SECTION 230, TITLE 14, CAC, RE: ISSUANCE OF PERMITS FOR OFFERING PRIZES FOR TAKING OF TROUT, BLACK BASS AND STRIPED BASS.
28. RECEIPT OF DEPARTMENT REPORT RE: HYDRAULIC HARVESTING OF GHOST SHRIMP ON MORRO BAY INTERTIDAL WETLANDS. (NO PUBLIC TESTIMONY - ISSUE WILL BE DISCUSSED ON FEBRUARY 7, 1986 IN MONTEREY.)
29. REQUEST OF JAMES WHITSETT, SAUSALITO, FOR RENEWAL OF EXPERIMENTAL GEAR PERMIT TO USE A HYDRAULIC DREDGE TO HARVEST CLAMS IN SPECIFIED OCEAN WATERS NORTH OF DOUBLE POINT, MARIN COUNTY.
30. REQUEST OF DR. CARL DJERASSI, STANFORD UNIVERSITY, FOR AUTHORIZATION TO COLLECT SPONGES (*P. psila*) WITHIN THE CARMEL BAY ECOLOGICAL RESERVE, MONTEREY COUNTY, FOR SCIENTIFIC RESEARCH.
31. REQUEST OF DR. ANDREW L. LISSNER, SCIENCE APPLICATIONS INTERNATIONAL CORP., LA JOLLA, FOR AUTHORIZATION TO COLLECT MUSSELS AT SPECIFIED ECOLOGICAL RESERVES, REFUGES AND SANCTUARIES FOR SCIENTIFIC RESEARCH.
32. AUTHORIZATION TO PUBLISH NOTICE OF INTENT TO ALLOT APPROXIMATELY FIVE ACRES OF STATE WATER BOTTOMS IN TOMALES BAY, MARIN COUNTY, TO SIDNEY ALAN WILSON, TOMALES, FOR AQUACULTURE PURPOSES.
33. AUTHORIZATION TO PUBLISH NOTICE OF INTENT TO ALLOT APPROXIMATELY 2-1/2 ACRES OF STATE WATER BOTTOMS IN TOMALES BAY, MARIN COUNTY, TO ROBERT CLUTTER, TOMALES, FOR AQUACULTURE PURPOSES.
34. REQUEST OF DR. DONALD SINIFF, UNIVERSITY OF MINNESOTA, FOR A 30-DAY EXTENSION OF THE MEMORANDUM OF UNDERSTANDING RE: CAPTURE AND RELEASE OF SEA OTTERS FOR SCIENTIFIC RESEARCH.
35. REQUEST OF CARL J. HUTTER, NORTHRIDGE, FOR AUTHORIZATION TO IMPORT AND POSSESS MINK FOR PET PURPOSES.
36. REQUEST OF RON KENERSON, RIO VISTA, FOR AUTHORIZATION TO POSSESS RACCOONS AND FOXES FOR TRAPPING SCENT PRODUCTION.
37. CONFIRMATION OF AUTHORIZATION TO DEPARTMENT TO COLLECT A NELSON BIGHORN SHEEP FOR RESEARCH PURPOSES.

LICENSE AND PERMIT CONSIDERATIONS

38. REQUEST OF BOYD SCOTT GROOM FOR REINSTATEMENT OF COMMERCIAL ABALONE FISHING PRIVILEGES.
39. REQUEST OF NIKOLAOS DIMITRIOS AFENTAKIS FOR REINSTATEMENT OF SPORT FISHING PRIVILEGES.
40. REQUEST OF ROBERT BREWER FOR OPPORTUNITY TO APPEAL DEPARTMENT'S DENIAL OF GILL NET SHARK/SWORDFISH PERMIT APPLICATION.

41. REQUEST OF RONALD E. ALEXANDER FOR REINSTATEMENT OF LICENSED GUIDE PRIVILEGES.

42. REQUEST OF GREGORY A. BRITTON, PHILLIP HARPER AND JOHN MC FARLAND FOR REINSTATEMENT OF PERMITS TO TAKE THREADFIN SHAD WITH POWER TRAWL AND/OR HAWAIIAN THROW NETS.

OTHER

43. ANNOUNCEMENT OF FUTURE MEETINGS.

44. COMMISSION INFORMATIONAL ITEMS.

45. ELECTION OF OFFICERS.

County of Ventura
Hall of Administration
Lower Plaza Assembly Room
800 So. Victoria
Ventura, California

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District at their regular meeting of November 19, 1985, regulations that would prohibit use of live bait in Stafford Lake. A draft copy of the regulations will be available by November 15. Basically, the regulations will simply state that use of any live bait is prohibited and a fine structure will also be adopted if allowed."

The Department has reconsidered its position on this issue and now believes it would be appropriate for the Commission to take regulatory action to implement the Director's request.

The Department's pre-publication of notice statement is provided in Exhibit No. 25. This matter will be considered by the Commission at its March 7 meeting in Sacramento.

26. AUTHORIZATION TO PUBLISH NOTICE OF INTENT TO AMEND SECTION 174, TITLE 14, CAC, RE: PERMITS TO USE GILL NETS OR TRAMMEL NETS FOR COMMERCIAL PURPOSES.

The Department is requesting that the Commission authorize its staff to publish notice of its intent to amend Section 174, Title 14, CAC, regarding permits to use gill nets or trammel nets for commercial purposes. Exhibit No. 26 contains the Department's pre-publication of notice statement pertaining to this proposal.

In summary, to initially qualify for a gill and trammel net permit, a fisherman is required to pass a proficiency examination or demonstrate participation in gill net fisheries by meeting specific landing requirements or demonstrate experience as a crewman on a gill net vessel. The problem that the proposed amendment to Section 174, Title 14, CAC, seeks to address is the provision requiring gill and trammel net permittees to requalify for the gill and trammel permit after renewing their permit for four consecutive years (gill and trammel permits are issued on an annual basis). The requirement to requalify for the gill and trammel net permit after four years of renewal is unnecessary and burdensome to gill net fishermen. Also, the proposed amendments will help streamline the administration and issuance of gill/trammel net permits which would benefit both the fishing industry and the Department.

This matter will be considered by the Commission at its March meeting in Sacramento.

27. AUTHORIZATION TO PUBLISH NOTICE OF INTENT TO AMEND SECTION 230, TITLE 14, CAC, RE: ISSUANCE OF PERMITS FOR OFFERING PRIZES FOR TAKING OF TROUT, BLACK BASS AND STRIPED BASS.

The Department is requesting that the Commission authorize its staff to publish notice of its intent to amend Section 230, Title 14, CAC, regarding issuance of permits for offering prizes for taking of trout, black bass and striped bass. The Department provides the following information on this proposal:

(a) Section 2003 of the Fish and Game Code was amended by 1985 Assembly Bill No. 1171 (Chapter 124). To conform to these amendments which will become effective January 1, 1986, Section 230, Title 14, CAC,

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State of California
FISH AND GAME COMMISSION

Meeting of January 3, 1986

CONSENT CALENDAR

Items 24-37 have been placed on the Commission's consent calendar. The Commission knows of no opposition to these proposals at this time other than as specified in this summary. The Department has provided a recommendation on each of these items which either calls for approval or modified approval by the Commission. Any item may be removed from the consent calendar by the Commission or upon request of the Department or someone in the audience who would like to speak to that item.

24. AMENDMENT OF SECTION 630, TITLE 14, CAC, RE: ADDING THE BOBELAINE ECOLOGICAL RESERVE, SUTTER COUNTY, TO THE LIST OF DESIGNATED ECOLOGICAL RESERVES AND TO PROVIDE REGULATIONS GOVERNING ITS USE.

Exhibit No. 24 contains the Department's pre-publication of notice and pre-adoption statements concerning this proposal. You will recall that this matter has been before the Commission at previous meetings and that regulations were filed with the Office of Administrative Law early in 1985. However, the Office of Administrative Law rejected those regulations based upon the fact that it felt the Commission did not have statutory authority to enter into memorandums of understanding to establish ecological reserves. To clarify this legislative intent, the Commission carried a bill (AB 1857 by Assemblyman Elder) which clarified that legislative intent. That bill was signed by the Governor. Exhibit No. 24 contains a copy of the bill.

In summary, Section 630, Title 14, CAC, provides for the designation of unique habitat areas which have appropriate wildlife values as state ecological reserves. This section also includes general rules and regulations for designated ecological reserves as well as special area regulations (when necessary) which protect the resource values of the ecological reserves while permitting compatible public use.

The Department is proposing that Section 630, Title 14, CAC, be amended to add Bobelaine Ecological Reserve, Sutter County, (430 acres) to the list of ecological reserves. It further recommends that the following special regulations be established for that new area:

1. State and local law enforcement officials, DFG personnel, California State Department of Water Resources persons, fire suppression agencies, and other individuals designated by the area manager, are authorized access to and within the Sanctuary to perform official duties. All other entry shall be by written permission from the area manager.

District at their regular meeting of November 19, 1985, regulations that would prohibit use of live bait in Stafford Lake. A draft copy of the regulations will be available by November 15. Basically, the regulations will simply state that use of any live bait is prohibited and a fine structure will also be adopted if allowed."

The Department has reconsidered its position on this issue and now believes it would be appropriate for the Commission to take regulatory action to implement the Director's request.

The Department's pre-publication of notice statement is provided in Exhibit No. 25. This matter will be considered by the Commission at its March 7 meeting in Sacramento.

26. AUTHORIZATION TO PUBLISH NOTICE OF INTENT TO AMEND SECTION 174, TITLE 14, CAC, RE: PERMITS TO USE GILL NETS OR TRAMMEL NETS FOR COMMERCIAL PURPOSES.

The Department is requesting that the Commission authorize its staff to publish notice of its intent to amend Section 174, Title 14, CAC, regarding permits to use gill nets or trammel nets for commercial purposes. Exhibit No. 26 contains the Department's pre-publication of notice statement pertaining to this proposal.

In summary, to initially qualify for a gill and trammel net permit, a fisherman is required to pass a proficiency examination or demonstrate participation in gill net fisheries by meeting specific landing requirements or demonstrate experience as a crewman on a gill net vessel. The problem that the proposed amendment to Section 174, Title 14, CAC, seeks to address is the provision requiring gill and trammel net permittees to requalify for the gill and trammel permit after renewing their permit for four consecutive years (gill and trammel permits are issued on an annual basis). The requirement to requalify for the gill and trammel net permit after four years of renewal is unnecessary and burdensome to gill net fishermen. Also, the proposed amendments will help streamline the administration and issuance of gill/trammel net permits which would benefit both the fishing industry and the Department.

This matter will be considered by the Commission at its March meeting in Sacramento.

27. AUTHORIZATION TO PUBLISH NOTICE OF INTENT TO AMEND SECTION 230, TITLE 14, CAC, RE: ISSUANCE OF PERMITS FOR OFFERING PRIZES FOR TAKING OF TROUT, BLACK BASS AND STRIPED BASS.

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(a) Section 2003 of the Fish and Game Code was amended by 1985 Assembly Bill No. 1171 (Chapter 124). To conform to these amendments which will become effective January 1, 1986, Section 230, Title 14, CAC,

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State of California
FISH AND GAME COMMISSION

Minutes, Meeting of January 3, 1986

Pursuant to the authority of Government Code Section 11126, the Commission met in closed Executive Session at 8:15 a.m. The purpose of this Executive Session was to consider job performance of the Commission staff for the past year. The Commission received a separate folder on this agenda item prior to the January 3 meeting.

Persons Present:

FISH AND GAME COMMISSION

William A. Burke	President
Brian J. Kahn	Vice President
Abel C. Galletti	Member
Albert C. Taucher	Member
Robert A. Bryant	Member

COMMISSION STAFF

Harold C. Cribbs	Executive Secretary
Robert R. Treanor	Assistant Executive Secretary

ATTORNEY GENERAL'S OFFICE

Denis Smaage	Deputy Attorney General
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The Executive Session was adjourned at 9:20 a.m.

Pursuant to the call of the President, the Commission met in the County of Ventura's Hall of Administration, Lower Plaza Assembly Room, 800 South Victoria, Ventura, California, on January 3, 1986. The meeting was called to order at 9:30 a.m. by President Burke.

Persons Present:

FISH AND GAME COMMISSION

William A. Burke	President
Brian J. Kahn	Vice President
Abel C. Galletti	Member
Albert C. Taucher	Member
Robert A. Bryant	Member

COMMISSION STAFF

Harold C. Cribbs	Executive Secretary
Robert R. Treanor	Assistant Executive Secretary

ATTORNEY GENERAL'S OFFICE

Denis Smaage

Deputy Attorney General

DEPARTMENT OF FISH AND GAME

Jack Parnell
Robert Fletcher
Eldridge Hunt
Robert Rawstron
DeWayne Johnston
Terry Mansfield

Director
Deputy Director
Chief, Wildlife Management Branch
Chief, Inland Fisheries Division
Chief, Wildlife Protection Branch
Wildlife Management Supervisor

The following persons were also present and heard:

Randy Seech
Carl Samuelson
Bob McKay
Jan Riffe

Earth First!
Earth First!
California Wildlife Federation
Chief, Division of Wildlife
Research, U.S. Fish and Wildlife
Service

Mike Scott
Dr. Richard Martyr

Condor Research Center, USFWS
Senior Vice President, National
Audubon Society

Eric Vang
Brian Walton
Dawn Hodson
Maeton Freel
Jeremiah O'Brien

Concerned Citizen
Predatory Bird Research Group
Concerned Citizen
U.S. Forest Service
Morro Bay Commercial Fisherman
Association
Commercial Fisherman
Commercial Fisherman
Research Director, Western Fishboat
Owners Association
Sportfishing Association of
California

Joe Nungaray
Boyd Reber
Frank Mason

California Urchin Diver's
Association
Executive Director, National
Coalition for Marine Conservation
Commercial Abalone Diver
Sport Fisherman
Commercial Fisherman
Commercial Threadfin Shad Fisherman
Commercial Threadfin Shad Fisherman
Commercial Threadfin Shad Fisherman

Bill Nott

Bruce Steele

Carl Nettleton

Boyd S. Groom
Nikolaos Afentakis
Robert F. Brewer
Gregory A. Britton
John McFarland
Phillip Harper

President Burke introduced members of the Commission, its staff, Director Parnell, Deputy Director Fletcher and Denis Smaage of the Attorney General's office.

The Department's pre-publication of notice statement is provided for Commission review. This matter will be considered by the Commission at its April 4 meeting in San Diego.

26. AUTHORIZATION TO PUBLISH NOTICE OF INTENT TO AMEND SECTION 174, TITLE 14, CAC, RE: PERMITS TO USE GILL NETS OR TRAMMEL NETS FOR COMMERCIAL PURPOSES.

The Department is requesting that the Commission authorize its staff to publish notice of its intent to amend Section 174, Title 14, CAC, regarding permits to use gill nets or trammel nets for commercial purposes. Commissioners were provided with copies of the Department's pre-publication of notice statement pertaining to this proposal.

In summary, to initially qualify for a gill and trammel net permit, a fisherman is required to pass a proficiency examination or demonstrate participation in gill net fisheries by meeting specific landing requirements or demonstrate experience as a crewman on a gill net vessel. The problem that the proposed amendment to Section 174, Title 14, CAC, seeks to address is the provision requiring gill and trammel net permittees to requalify for the gill and trammel permit after renewing their permit for four consecutive years (gill and trammel permits are issued on an annual basis). The requirement to requalify for the gill and trammel net permit after four years of renewal is unnecessary and burdensome to gill net fishermen. Also, the proposed amendments will help streamline the administration and issuance of gill/trammel net permits which would benefit both the fishing industry and the Department.

This matter will be considered by the Commission at its April 4 meeting in San Diego.

27. AUTHORIZATION TO PUBLISH NOTICE OF INTENT TO AMEND SECTION 230, TITLE 14, CAC, RE: ISSUANCE OF PERMITS FOR OFFERING PRIZES FOR TAKING OF TROUT, BLACK BASS AND STRIPED BASS.

The Department is requesting that the Commission authorize its staff to publish notice of its intent to amend Section 230, Title 14, CAC, regarding issuance of permits for offering prizes for taking of trout, black bass and striped bass. The Department provides the following information on this proposal:

- (a) Section 2003 of the Fish and Game Code was amended in 1985 by Assembly Bill No. 1171 (Chapter 124). To conform to these amendments which will become effective January 1, 1986, Section 230, Title 14, CAC, must be amended to require permits only for tournaments offering prizes totaling more than \$200 for the taking of trout, black bass and striped bass.
- (b) Currently, Section 230, Title 14, CAC, requires a permit from the Department for any black bass or striped bass fishing contest, derby, or tournament in California State waters. Permits are also required for those trout fishing contests, derbies, or tournaments offering individual prizes greater than \$200 in value. These permits are specifically required by Section 2003 of the Fish and Game Code. The intent of both

State of California

Office of Administrative Law

Memorandum

To : Mr. Harold C. Cribbs Executive Secretary Fish and Game Commission
1416 Ninth Street
Sacramento CA 95814
 From : Marc Lomis STAFF COUNSEL
 Subject: APPROVAL FOR PUBLICATION OF NOTICE OF PROPOSED ACTION
 NO. Z 86-0114-4, FILED January 14, 1986
 (date)

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 Date : January 15, 1986
 File No.:
 Telephone: ATSS ()
 ()

The Administrative Procedure Act (APA), Government Code section 11346.4(e), authorizes the Office of Administrative Law (OAL) to review notices submitted for publication for compliance with Article 5 of the APA, Government Code sections 11346--11347.5.

Your agency submitted the above referenced Notice of proposed action for publication in the California Administrative Notice Register.

(check if
 applicable):

At the request of your agency, OAL made certain changes in the submitted material. These changes are shown in attachment A, a copy of the changed page/pages of the Notice.

[or]

With your memorandum dated _____, your agency submitted additional material at OAL's request to facilitate prompt publication of the Notice.

After reviewing the notice filing (which consisted of the Notice, Initial Statement of Reasons, and the Express Terms of the proposed action), OAL has approved publication of the Notice in the Notice Register of January 24, 1986.
 (date)

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OAL's pre-publication review of your Notice does not substitute for, include, or supersede the subsequent substantive and procedural review of your proposed regulations and rulemaking file. This latter review will be conducted after the completed rulemaking file is submitted to OAL for review under Government Code section 11349.3.

In this pre-publication phase, OAL performs only a limited review of the Notice (including the Informative Digest), the proposed text, and the Initial Statement of Reasons, primarily for purposes of publication.

Later, in the review of the completed rulemaking file, it is possible that APA non-compliance problems in the notice, initial statement of reasons, or text as originally proposed could lead to disapproval of the file by OAL. For example, the pre-publication review does not evaluate the proposed regulation in terms of necessity, clarity, consistency, non-duplication, authority or reference under Government Code section 11349.1.

If you have any questions regarding this matter, please contact me at (916) 323-6806 or ATSS 8-453-6806.

Encl.

Date-stamped copy of Notice
13/appl

Ex. D - 37



STATE OF CALIFORNIA

Fish and Game Commission

HAROLD C. CRIBBS
EXECUTIVE SECRETARY
1416 NINTH STREET
SACRAMENTO, CALIFORNIA 95814
(916) 445-5708

COMMISSIONERS

William A. Burke, Ed. D., President
Brentwood
Brian J. Kahn, Vice President
Santa Rosa
Abel C. Galletti
Rancho Palos Verdes
Albert C. Taucher
Long Beach
Robert A. Bryant
Yuba City

NOTICE OF PROPOSED CHANGES IN REGULATIONS
OF THE FISH AND GAME COMMISSION

NOTICE IS HEREBY GIVEN that the Fish and Game Commission, pursuant to the authority vested by sections 8664.6 and 8682 of the Fish and Game Code and to implement, interpret or make specific sections 1050, 1700, 8568, 8680, 8681, 8682 and 8683 of said Code, proposes to amend Section 174, Title 14, California Administrative Code, regarding permits to use gill nets or trammel nets for commercial purposes.

Informative Digest

Existing regulations [Section 174(b)(5), Title 14, CAC] provide for renewal of permits to use gill and trammel nets where a permittee possessed a valid permit during the previous permit year (April 1 through March 31) and provides for requalifying for this permit after four consecutive years of renewal. Section 174(b)(5) specifies that prior to the fifth consecutive permit year, a gill and trammel net permittee must requalify for the gill and trammel net permit in one of four ways:

- 1) demonstrate to the director that he has 12 months of experience (with 180 days spent at sea) as a crewman aboard a gill or trammel net vessel during the previous five years; 2) pass a proficiency examination in the use of gill and trammel nets; 3) demonstrate that, as owner or operator of a legally registered commercial fishing vessel, he landed at least 10,000 pounds or \$10,000 worth of fish taken in gill and trammel nets during the past five years; or 4) demonstrate that as the owner or operator of a legally registered commercial fishing vessel, he landed at least 1,000 pounds of fish taken in gill and trammel nets in four of the five license years prior to the date of application.

The proposed change to Section 174(b)(5), Title 14, CAC, would eliminate the requirement that gill and trammel net permittees need to requalify for a permit every five years.

The existing provisions of subsection 174(j), Title 14, CAC, prohibit the use of gill nets or trammel nets in portions of Fish and Game District 10 between Point Reyes Light House, Marin County and Pigeon Point, San Mateo County, through October 16, 1983. This provision would be deleted as it is no longer valid.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Auditorium, Room B-109, State Building, 1350 Front Street, San Diego, California, on April 4, 1986, at 9:00 a.m., or as soon thereafter as the matter may be heard. To provide adequate time for Commission review, written comments should be received in the Fish and Game Commission office by 5:00 p.m. on April 1, 1986. Written comments must be received no later than April 4, 1986 at the hearing in San Diego.

The regulations as proposed in strike-out and underline format, as well as a statement of purpose, including environmental considerations and all information upon which the proposal is based, are on file and available for public review from Harold C. Cribbs, Executive Secretary, Fish and Game Commission, 1416 Ninth Street, Sacramento, 95814, phone (916) 445-5708. Please direct inquiries to Harold C. Cribbs at the preceding phone number.

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein.

Economic Impact

The Commission has determined that the proposed changes: (1) will have no effect on housing costs; (2) do not mandate any programs upon local agencies or school districts; (3) involve no increased costs or savings to any local agency or school district, state agency or federal funding to the state; (4) will have no adverse economic impact on small business; and (5) involve no significant cost to private persons or entities.

FISH AND GAME COMMISSION

Harold C. Cribbs
Executive Secretary

Dated: January 13, 1986

State of California

4
The Resources Agency

Memorandum

FISH AND GAME
COMMISSION

To : Executive Secretary
Fish and Game Commission

MAR 26 8 07 AM '86

Date : March 13, 1986

From : Department of Fish and Game - Director

Subject : Agenda Item for April 7, 1986 Fish and Game Commission Meeting.

Consideration of amending Section 174, Title 14, CAC, re: Permits to use gill nets for commercial purposes.

Attached is the Pre-adoption Statement of Purpose for subject agenda item for the April 7, 1986 Fish and Game Commission meeting.

We recommend the Commission approve the regulation change as proposed.

Robert C. Parnell
Jack C. Parnell
Director

Attachment

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
STATEMENT OF PURPOSE FOR REGULATORY ACTION
(Pre-Adoption)

(Amend Section 174, Title 14, CAC, re: Permits to use Gill Nets for
Commercial
Purposes)

I. (a) Date of Statement of Purpose (pre-publication of notice):

November 22, 1985

(b) Date of pre-adoption statement of purpose: March 10, 1986

II. Description of modification to pre-publication of notice statement of purpose.

None proposed.

III. Date(s) and Location(s) of Hearing(s):

(a) Final Adoption Hearing: Date: April 7, 1986

Location: San Diego, California

IV. Description of Modifications of Pre-Publication of Notice Statement of Purpose:

No Change.

V. Reasons for modifications of Pre-publication of Notice Statement of Purpose:

No Change.

VI. Summary of Primary Considerations Raised in Opposition and in Support:

There have been no comments received in support or opposition to the proposed regulation change since notice of the proposed change was published.

174. Permit to Use Gill Nets or Trammel Nets for Commercial Purposes.

(a) Permit Required.

(1) The owner or operator of a vessel using a gill net or trammel nets shall have obtained a valid gill net/trammel net permit and shall be in possession of said permit when engaged in gill netting or trammel netting activities except as provided under subsection (i). Except as otherwise provided, it is unlawful to fish with a gill net or trammel net unless a permittee is aboard the vessel.

(2) To Whom Issued. The department shall issue permits to the owner or operator of a currently registered commercial fishing vessel who has qualified pursuant to subsection (b).

(3) Where Issued. Permits shall be issued at department offices in Eureka, Menlo Park, Monterey, Long Beach and San Diego.

(b) Qualifications for the Permit. To qualify for a permit, an applicant shall:

(1) Have worked as a crewmember for at least 12 months on vessels using gill nets or trammel nets and shall have worked at least 180 days at sea on such vessels; or

(2) Pass a proficiency examination administered by the department. The proficiency examination shall include written and performance tests which demonstrate knowledge of the proper use of gill nets or trammel nets.

(3) Prove to the director's satisfaction that as the owner or operator of a legally registered commercial fishing vessel, he has landed at least 10,000 pounds of fish during a 12-month period, or has landed fish during a 12-month period for which he was paid at least \$10,000. Only landings of fish caught by the use of gill nets or trammel nets shall be used to satisfy the catch requirements of this subsection; or

(4) Prove to the director's satisfaction that as the owner or operator of a legally registered commercial fishing vessel, he has landed at least 1,000 pounds of fish taken in gill nets or trammel nets in 4 of the 5 license years prior to the date of application; or

(5) Have possessed a permit issued pursuant to this section during the previous season and shall have complied with subsection (f) of these regulations. ~~If a permittee has qualified for a permit pursuant to subsection (b)(5) during the four previous seasons, he may not qualify on the basis of previously possessing a permit, but may qualify pursuant to subsection (b)(1), (b)(2), (b)(3), or (b)(4).~~

(6) Only landings and crewmember experience occurring during the five-year period prior to the date of application shall be used to meet the requirements of subsection (b). The applicant shall supply documentation that he was a legally licensed commercial fisherman when he made the required landings or met the crewmember experience requirements. Crewmember experience shall be documented by fishing records submitted to the department as required by subsection (f), or by a notarized document signed by the owner or operator of vessels on which the applicant has completed the required experience. Landings of fish shall be verified by the submission of copies of landing receipts.

(c) Limitations of Permit. Permits are nontransferable. Not more than one permit shall be issued to any person.

(d) Duration of Permit. Except as otherwise provided, permits issued pursuant to these regulations, shall be in force from April 1 through March 31 of the following year, or if issued after the beginning of such term, for the remainder thereof.

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(e) Cost of Permit. The fee for the permit shall be \$50.00.

(f) Records. If fish are landed under the terms of this permit, the permittee shall complete an accurate record of all gill net and trammel net fishing activities under this permit on forms provided by the department. Such records shall be sent to the Fish and Game office in Long Beach, on a monthly basis and must be postmarked no later than the fifth day of the next month. Information required on these forms shall include, but not be limited to:

- (1) Number of swordfish taken.
 - (2) Number of marlin taken.
 - (3) Number of white seabass taken.
 - (4) Names of crewmembers.
 - (5) Such other information as the department may request.
- All fish records shall be deemed confidential.

(g) Conditions of Permit. Provisions of the Fish and Game Code relating to commercial fish except as modified by the provisions of these regulations, shall be a condition of all permits to be fully performed by the holders thereof, their agents, servants, employees or those acting under their direction or control.

(h) Revocation of Permits. A permit may be revoked or canceled by the commission for a period not to exceed one year from the date of revocation upon a conviction for a violation of a provision of Article 5, Chapter 3, Part 3, Division 6 of the Fish and Game Code, or any regulation authorized by this article, or the terms or conditions of this section by the holders thereof, their agents, servants, employees, or those acting under their direction and control.

(i) Exemptions from Permit. The owner or operator of a vessel operating under a permit issued pursuant to Section 163, Title 14, CAC, is not required to possess the permit authorized by this section.

~~(j) Areas with restricted fishing:~~

~~(1) Gill nets and trammel nets shall not be used in that portion of District 10 between the shore and a line extending due south magnetic from the Point Reyes light station, Marin County, out to the 10-fathom contour; from there the line follows the 10-fathom contour east, north and then southeast to the whistle buoy (Duxbury) located approximately 2 miles southeast (153 degrees magnetic) from Duxbury Point, Marin County, then in a straight line easterly (approximately 097 degrees magnetic) to the bell buoy (Bonita) located approximately one mile southwest (209 degrees magnetic) of Point Bonita, Marin County; then in a straight line south (176 degrees magnetic) to a point in about 15 fathoms of water where it intersects a line extending due west magnetic from Mussel Rock, San Mateo County (Mussel Rock is located approximately 2 miles north of the Pacifica Pier); then south following the 15-fathom contour to a point in 15 fathoms of water where it intersects a line extending due west magnetic from Miramontes Point, San Mateo County; then east on that line to the 10-fathom contour and then in a southerly direction following the 10-fathom contour to a point on a line extending due west magnetic from Pigeon Point; then due east to the shoreline at Pigeon Point.~~

~~(2) Depth referenced in subsection (j)(1) shall be those existing at mean high water.~~

~~(k) Subsections (j) and (k) shall be effective through October 16, 1983.~~

Authority: Sections 8664.6 and 8682, Fish and Game Code.

Reference: Sections 1050, 1700, 8568, 8680, 8681, 8682 and 8683, Fish and Game Code.

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State of California
FISH AND GAME COMMISSION

NOTE: This meeting had originally been scheduled for April 4, 1986 at 9:00 a.m. at the same location; however, it has been rescheduled for April 7, 1986. All items originally noticed to be heard on April 4, 1986 have been rescheduled for consideration on April 7, 1986 as set forth below.

Meeting of
April 7, 1986 (Monday)
9:00 a.m.

Auditorium, Room B-109*
State Building
1350 Front Street
San Diego, California

AGENDA

ALL MEETINGS OPEN TO THE PUBLIC

DISCUSSION ITEMS

1. READING AND APPROVAL OF MINUTES OF FEBRUARY 6-7, 1986.
2. RECEIPT OF DEPARTMENT INFORMATIONAL ITEMS.
3. DISCUSSION OF PROPOSALS AND ANNOUNCEMENT OF TENTATIVE APPROVALS FOR THE 1986-87 MAMMAL HUNTING AND TRAPPING REGULATIONS.
4. DEPARTMENT REQUEST TO CONTINUE IMPLEMENTATION OF FORESTHILL DIVIDE MOUNTAIN LION MANAGEMENT PLAN, PLACER COUNTY.
5. AMENDMENT OF SECTIONS 1.17, 13.05, 13.35, 13.85 AND 27.80, AND ADDITION OF SECTIONS 1.74, 13.36 AND 13.86, TITLE 14, CAC, RE: SALMON SPORT FISHING RESTRICTIONS AND LIMITS.
6. REQUEST OF BIG BEAR MUNICIPAL WATER DISTRICT FOR EMERGENCY AMENDMENT OF SECTION 3.00, TITLE 14, CAC, TO PROHIBIT NIGHT FISHING AT BIG BEAR LAKE, SAN BERNARDINO COUNTY.
7. REQUEST OF U.S. MARINE CORPS, CAMP PENDLETON, SAN DIEGO COUNTY, FOR WAIVER OF SECTION 5.00, TITLE 14, CAC, RE: DELETION OF THE 12-INCH MINIMUM SIZE RESTRICTION AT LAKE O'NEILL, SAN DIEGO COUNTY.
8. REQUEST OF NEAL A. GRASTEIT, GRASTEIT FISH COMPANY, FALLON, NEVADA, FOR AUTHORIZATION TO IMPORT, TRANSPORT AND POSSESS LIVE CATFISH FOR RETAIL SALE.
9. DEPARTMENT REPORT RE: SHELLFISH QUARANTINE - MORRO BAY, SAN LUIS OBISPO COUNTY.
10. REQUEST OF WATERFOWL HABITAT OWNERS ALLIANCE RE: LITIGATION - NATIONAL WILDLIFE FEDERATION VS. HODEL.

* These facilities are accessible to persons with disabilities.

CONSENT CALENDAR

11. DEPARTMENT REQUEST FOR APPROVAL OF REVISED TERMS AND CONDITIONS OF THREADFIN SHAD EXPERIMENTAL GEAR PERMITS.
12. AMENDMENT OF SECTION 4.25, TITLE 14, CAC, RE: PROHIBITING THE USE OF FIN FISH FOR BAIT IN STAFFORD LAKE, MARIN COUNTY.
13. AMENDMENT OF SECTION 174, TITLE 14, CAC, RE: PERMITS TO USE GILL NETS OR TRAMMEL NETS FOR COMMERCIAL PURPOSES.
14. AMENDMENT OF SECTION 230, TITLE 14, CAC, RE: ISSUANCE OF PERMITS FOR OFFERING PRIZES FOR TAKING OF TROUT, BLACK BASS AND STRIPED BASS.
15. AMENDMENT OF SECTIONS 670.2 AND 670.5 AND ADDITION OF SECTION 670.1, TITLE 14, CAC, RE: LISTING, DELISTING AND CRITERIA FOR IDENTIFYING ENDANGERED AND THREATENED SPECIES.
16. REQUEST OF DOMINIC E. GREGORIO AND JOHN G. BALESTERI, SAN PEDRO, FOR ALLOTMENT OF APPROXIMATELY TWO ACRES OF STATE WATER BOTTOMS NEAR BLUE CAVERN POINT, SANTA CATALINA ISLAND, LOS ANGELES COUNTY, FOR AQUACULTURE PURPOSES.
17. REQUEST OF DONALD R. POWERS, U.C. DAVIS, FOR AUTHORIZATION TO COLLECT ANNA HUMMINGBIRDS (*Calypete anna*) AND COSTA HUMMINGBIRDS (*Calypete costae*) WITHIN STATE GAME REFUGES IN RIVERSIDE COUNTY FOR RESEARCH PURPOSES.
18. REQUEST OF JOHN KONATICH, ANTON KONATICH AND BYRON SERPAS FOR RENEWAL OF EXPERIMENTAL GEAR PERMIT NO. X-1111 RE: USE OF A HYDRAULIC DREDGE TO TAKE CLAMS IN OCEAN WATERS OFF NORTHERN CALIFORNIA.

LICENSE AND PERMIT CONSIDERATIONS

19. REQUESTS FOR WAIVERS OF COMMERCIAL ABALONE LANDING REQUIREMENTS.
20. REVOCATION OF TRAPPING PRIVILEGES OF CAROL ANN HERYFORD AND CALVIN LEE HERYFORD.
21. REVOCATION OF COMMERCIAL LOBSTER FISHING PRIVILEGES OF JONATHAN M. CADMAN.
22. REVOCATION OF COMMERCIAL SALMON FISHING PRIVILEGES OF CHARLES MILTON CLARK.
23. REQUEST OF EDWARD JORGE FERREIRA FOR REINSTATEMENT OF SPORT FISHING PRIVILEGES.
24. REQUEST OF JEFF SPITZIG FOR OPPORTUNITY TO APPEAL DEPARTMENT'S DENIAL OF GILL NET SHARK/SWORDFISH PERMIT APPLICATION.
25. REINSTATEMENT OF COMMERCIAL SALMON FISHING PRIVILEGES OF ROBERT THOMAS BURCHELL.

OTHER

26. ANNOUNCEMENT OF FUTURE MEETINGS.
27. COMMISSION INFORMATIONAL ITEMS.
28. RECEIPT OF STATEMENT FROM SAN DIEGO COUNTY FISH AND WILDLIFE ADVISORY COMMISSION.

174

State of California
FISH AND GAME COMMISSION

NOTE: This meeting had originally been scheduled for April 4, 1986 at 9:00 a.m. at the same location; however, it has been rescheduled for April 7, 1986. All items originally noticed to be heard on April 4, 1986 have been rescheduled for consideration on April 7, 1986 as set forth below.

Meeting of April 7, 1986 (Monday) 9:00 a.m.	Auditorium, Room B-109 State Building 1350 Front Street San Diego, California
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AGENDA ANALYSIS

DISCUSSION ITEMS

1. READING AND APPROVAL OF MINUTES OF FEBRUARY 6-7, 1986.

Copies of the minutes of the February 6-7, 1986 meeting have been distributed to members of the Commission and your staff knows of no known errors or omissions therein and suggests they be approved in their present form.

Suggested motion:

MOVED BY	SECONDED BY	THAT
INASMUCH AS THE MINUTES OF THE FEBRUARY 6-7, 1986 MEETING		
HAVE BEEN DISTRIBUTED TO MEMBERS OF THE COMMISSION AND THERE		
ARE NO KNOWN ERRORS OR OMISSIONS THEREIN, READING BE DISPENSED		
WITH AND THEY BE APPROVED AS DISTRIBUTED.		

2. RECEIPT OF DEPARTMENT INFORMATIONAL ITEMS.

This item has been set aside to afford the Director an opportunity to present the Commission with informational items. The Director or his representative will be prepared to make this presentation to the Commission.

3. DISCUSSION OF PROPOSALS AND ANNOUNCEMENT OF TENTATIVE APPROVALS FOR THE 1986-87 MAMMAL HUNTING AND TRAPPING REGULATIONS.

Included in Exhibit No. 3 (see separate folder) are the revised recommendations of the Department and a summary of the oral and written recommendations received from the public on March 7. In addition to the summary of public recommendations as required by law, the correspondence is provided which explains the rationale behind the public proposals.

The Fish and Game Code mandates that the mammal proposals presented at the March 7 meeting in Sacramento shall be open to the public for discussion and presentation of objections to or in support of such proposals.

"There are presently 30 individuals with permits. Twenty-one have failed to comply with the reporting requirements. Five of these permittees were sent warning letters and sixteen were sent letters of revocation with instructions to arrange to appear before the Commission and show cause why their permits should be reinstated.

"We have maintained a waiting list which consists of 14 names. We request that the Commission authorize the Department to renew the permits of the nine who have met all requirements, five who were sent warnings and to issue permits to as many on the waiting list as possible to give us a total of 30 threadfin shad permittees."

12. AMENDMENT OF SECTION 4.25, TITLE 14, CAC, RE: PROHIBITING THE USE OF FIN FISH FOR BAIT IN STAFFORD LAKE, MARIN COUNTY.

At the Commission's January 3, 1986 meeting in Ventura, it authorized its staff to publish notice of its intent to amend Section 4.25, Title 14, CAC, to prohibit the use of fin fish for bait at Stafford Lake, Marin County. That legal notice has been published. In summary, fin fish may be used for bait at Stafford Lake, Marin County, according to existing regulations. Apparently allowing such use in the past led to the establishment of a large population of carp which severely depressed the game fish population at that lake. Now that all such fish have been removed from the lake and game fish restocked, it can be expected that angling will improve greatly. To help prevent undesirable fishes from once again "taking over" the lake, the Department has recommended that bait fish use in Stafford Lake be made illegal.

Exhibit No. 12 contains the Department's pre-publication and pre-adoption statements pertaining to this proposed action as well as the text of the regulations in strike out and underline format. No correspondence has been received on this proposal and the Department recommends final adoption.

13. AMENDMENT OF SECTION 174, TITLE 14, CAC, RE: PERMITS TO USE GILL NETS OR TRAMMEL NETS FOR COMMERCIAL PURPOSES.

At the Commission's January 3, 1986 meeting in Ventura, it authorized its staff to publish notice of its intent to amend Section 174, Title 14, CAC, regarding permits to use gill nets or trammel nets for commercial purposes. That legal notice has been published. In summary, the existing provisions of subsection 175(j), Title 14, CAC, prohibit the use of gill nets or trammel nets in portions of Fish and Game District 10 between Point Reyes Light House, Marin County and Pigeon Point, San Mateo County, through October 16, 1983. This provision would be deleted as it is no longer valid.

Exhibit No. 13 contains the Department's pre-publication of notice and pre-adoption statements as well as the text of the regulations in strike out and underline format.

The Department recommends final adoption of the regulations.

14. AMENDMENT OF SECTION 230, TITLE 14, CAC, RE: ISSUANCE OF PERMITS FOR OFFERING PRIZES FOR TAKING OF TROUT, BLACK BASS AND STRIPED BASS.

At the Commission's January 3, 1986 meeting in Ventura, it authorized its staff to publish notice of its intent to amend Section 230, Title 14, CAC

State of California
FISH AND GAME COMMISSION

Meeting of April 7, 1986

CONSENT CALENDAR

Items 11 through 18 have been placed on the Commission's consent calendar for its April 7, 1986 meeting. The Commission knows of no opposition to these proposals at this time other than as specified in this summary. The Department has provided a recommendation on each of these items which either calls for approval or modified approval by the Commission. Any item may be removed from the consent calendar by the Commission or upon request of the Department or someone in the audience who would like to speak to that item.

11. DEPARTMENT REQUEST FOR APPROVAL OF REVISED TERMS AND CONDITIONS OF
THREADFIN SHAD EXPERIMENTAL GEAR PERMITS.

The Department makes the following recommendation regarding this issue:

"The past year has proven a need for clarification of the threadfin shad catch reporting requirement. Attached is a proposed draft of a revised permit (see Exhibit No. 11). The only changes made were item Nos. 3 and 7. By changing their sequence and capitalizing #3, which pertains to reporting, we hope to solve some of these problems.

"There are presently 30 individuals with permits. Twenty-one have failed to comply with the reporting requirements. Five of these permittees were sent warning letters and sixteen were sent letters of revocation with instructions to arrange to appear before the Commission and show cause why their permits should be reinstated.

"We have maintained a waiting list which consists of 14 names. We request that the Commission authorize the Department to renew the permits of the nine who have met all requirements, five who were sent warnings and to issue permits to as many on the waiting list as possible to give us a total of 30 threadfin shad permittees."

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Exhibit No. 12 contains the Department's pre-publication and pre-adoption statements pertaining to this proposed action as well as the text of the regulations in strike out and underline format. No correspondence has been received on this proposal and the Department recommends final adoption.

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Exhibit No. 13 contains the Department's pre-publication of notice and pre-adoption statements as well as the text of the regulations in strike out and underline format.

The Department recommends final adoption of the regulations.

14. AMENDMENT OF SECTION 230, TITLE 14, CAC, RE: ISSUANCE OF PERMITS FOR OFFERING PRIZES FOR TAKING OF TROUT, BLACK BASS AND STRIPED BASS.

At the Commission's January 3, 1986 meeting in Ventura, it authorized its staff to publish notice of its intent to amend Section 230, Title 14, CAC, regarding issuance of permits for offering prizes for the taking of trout, black bass and striped bass. The following is a summary of the proposed changes:

Currently, Section 230, Title 14, CAC, requires a permit from the Department for any black bass or striped bass fishing contest, derby or tournament in California State waters. Permits are also required for those trout fishing contests, derbies, or tournaments offering individual prizes greater than \$200 in value. These permits are specifically required by Section 2003 of the Fish and Game Code. The intent of both the law and the regulation is to provide a way for the Department to monitor the thousands of fishing tournaments that occur each year and to prevent overexploitation of black bass, trout and striped bass fisheries due to these tournaments.

In 1985 the Legislature amended Section 2003, Fish and Game Code. Instead of requiring permits for trout fishing tournaments with individual prizes greater than \$200 and for all black bass and striped bass tournaments, the Code section now requires a permit only for those black bass, striped bass, and trout tournaments offering prizes whose total value is greater than \$200.

The proposed regulation changes are necessary to bring Section 230, Title 14, CAC, into conformity with amendments to Fish and Game Code Section 2003. The changes will eliminate the permit requirement for black bass and striped bass tournaments with individual prizes less than

Ex. D - 50

\$200. Permits will be required only for black bass, striped bass and trout fishing contests with prizes totaling more than \$200 in value per contest.

Exhibit No. 14 contains the Department's pre-publication of notice and pre-adoption statements as well as the text of the regulations in strike out and underline format. The Commission office has received no correspondence on this issue. The Department recommends final adoption.

15. AMENDMENT OF SECTIONS 670.2 AND 670.5 AND ADDITION OF SECTION 670.1, TITLE 14, CAC, RE: LISTING, DELISTING AND CRITERIA FOR IDENTIFYING ENDANGERED AND THREATENED SPECIES.

At the Commission's February 7, 1986 meeting in Monterey, it authorized its staff to publish notice of its intent to add Section 670.1 and to amend sections 670.2 and 670.5, Title 14, CAC, regarding listing of endangered and threatened species, plant species of California declared to be endangered, threatened or rare and animals of California declared to be endangered or threatened. That legal notice has been published. The following is a summary of the proposal:

Existing regulations do not reflect recent changes in California's endangered species laws. They do not provide guidelines for submitting a petition to list or delist a species as endangered or threatened and do not provide criteria for determining if a species warrants listing as endangered or threatened. Proposed regulations address these shortcomings, as mandated by law.

Existing regulations provide only for rare and endangered plants. Proposed regulations also provide for the listing of threatened plants, as mandated by law.

Current listings of rare and endangered plants and animals contain outdated scientific names and misspellings. Proposed regulations reflect editorial corrections.

The California Endangered Species Act of 1984 (Assembly Bill No. 3270, Chapter 1162) directed the Fish and Game Commission to adopt guidelines by which an individual may petition for the listing or delisting of a plant or animal as endangered or threatened and to establish criteria for determining if a species is endangered or threatened. Proposed regulations of Section 670.1, Title 14, California Administrative Code, meet these requirements.

As mandated by law, proposed regulations provide guidelines for listing and delisting of endangered and threatened species. Provisions of subsection (a) of Section 670.1, Title 14, CAC, require submission of the authorized petition form, FGC - 670.1 for listing and delisting recommendations and provide for rejection of a petition that does not sufficiently contain the information requested in petition form FGC - 670.1.

Petition form FGC - 670.1 requires submission of sufficient scientific information to warrant the recommended action, as mandated by Section 2072.3 of the Fish and Game Code, but does not limit the submission of supportive information to only those categories provided. While FGC - 670.1 is specific in its requirements, a certain degree of flexibility is afforded the petitioner. It is realized that petitions will be received from members of the general public, as well as from the academic community. It is also realized that there will be communication during the review period between the reviewer, the Department of Fish and Game and the petitioner.

Sections 670.2 and 670.5 of Title 14, CAC, are being amended to provide for a threatened species category, as mandated by AB 3270. In the case of Section 670.5, the rare category is being replaced by a threatened category, since all species declared rare by the Commission were automatically designated as threatened with passage of AB 3270. The rare category of Section 670.2 is, however, being retained pursuant to sections 1901 and 2067 of the Fish and Game Code. Section 670.2 will, therefore, have three categories of plants - endangered, threatened and rare. Plant species may be petitioned for listing as endangered or threatened (as defined by sections 2062 and 2067 of the Fish and Game Code, respectively) under the provisions of Section 670.1, Title 14, CAC. Plant species may be recommended for rare designation under the provisions of Section 1904 of the Fish and Game Code. It should be noted that plants will be listed as threatened only after the proposed provisions of Section 670.1, Title 14, CAC, provide mechanisms for listing.

Sections 670.2 and 670.5 are also being amended to correct misspellings and outdated scientific names. These editorial changes will provide for greater clarity of the sections.

Exhibit No. 15 contains the Department's pre-publication notice and pre-adoption statements as well as the text of the regulations in strike out and underline format. The Commission office has received no correspondence on this proposal and the Department recommends final adoption.

16. REQUEST OF DOMINIC E. GREGORIO AND JOHN G. BALESTERI, SAN PEDRO, FOR ALLOTMENT OF APPROXIMATELY TWO ACRES OF STATE WATER BOTTOMS NEAR BLUE CAVERN POINT, SANTA CATALINA ISLAND, LOS ANGELES COUNTY, FOR AQUACULTURE PURPOSES.

At the Commission's December 6, 1985 meeting in Sacramento, it authorized its staff to publish the required 90-day notice of its intent to allot approximately two acres of state water bottoms near Blue Cavern Point, Santa Catalina Island, Los Angeles County, to Dominic E. Gregorio and John G. Balesteri, San Pedro, for aquaculture purposes. That legal notice has been published.

The Department provides the following recommendation:

"At its December 6, 1985 meeting, the Commission approved publication of a notice of intent of Dominic E. Gregorio and John G. Balesteri to lease approximately six acres of state water bottoms near

State of California
FISH AND GAME COMMISSION
Minutes, Meeting of April 7, 1986

Pursuant to the call of the President, the Commission met in the Auditorium, Room B-109, State Building, 1350 Front Street, San Diego, California, on April 7, 1986. The meeting was called to order at 9:30 a.m. by Vice President Galletti.

Persons present:

FISH AND GAME COMMISSION

Abel C. Galletti	Vice President
Albert C. Taucher	Member
Robert A. Bryant	Member
John A. Murdy, III	Member

COMMISSION STAFF

Harold C. Cribbs	Executive Secretary
Robert R. Treanor	Assistant Executive Secretary

ATTORNEY GENERAL'S OFFICE

Denis Smmage	Deputy Attorney General
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DEPARTMENT OF FISH AND GAME

Jack C. Parnell	Director
Robert Fletcher	Deputy Director
Eldridge Hunt	Chief, Wildlife Management Branch
DeWayne Johnston	Chief, Wildlife Protection Branch
Terry Mansfield	Wildlife Management Supervisor

The following persons were also present and heard:

Bud Hemman	Central Valley Sportsmen
Bruce Dodge	California Houndsmen for Conservation
Bob McKay	California Wildlife Federation
Bob Tanner	High Sierra Packers Association
Don Bolster	Sportsman
Bob Fusco	California Wildlife Federation
Chuck Nuniger	Sportsman
Walt Foster	Sportsman
Don Collis	Organized Sportsmen of Modoc Co.
Elwood Davis	Alpine Co. Fish and Game Commission
John Hammons	Unified Sportsmen
Paul Young	Concerned Citizen
Mike Michael	Western Sierra Sportsman Club
Larry Peters	Stockton Houndsmen
Harriet Allen	Concerned Citizen
Mike McCoy, DVM	Concerned Citizen

Cris Waller
 Norman Roberts, DVM
 Lew Davis
 James Graham
 George Gamble
 Ken Book

Elizabeth Earle
 Elizabeth King
 Mark Jorgensen
 Sharon Negri
 Pat Flanagan
 Sally Mackler
 Alta Toler
 Emily Durbin
 Linda Gerry
 Tex Jennings
 Fred Pasquarella
 Bud Holmes
 Tony Andrade, Jr.
 Andy Brown
 Brian Bilbray

Bob Hulbrook
 Dan Kent
 George Ray
 Mike Maier
 Kent DeChambeau
 Charles Clark
 George Silva
 Jeff Spitzig
 Robert Burchell
 Ronald Alexander
 Dan Cannon

Concerned Citizen
 Concerned Citizen
 Department of Food and Agriculture
 Pacific Crest Llama Packers
 California Trappers Association
 Sportsmen's Council of Central
 California
 Concerned Citizen
 Concerned Citizen
 Anza Borrego Desert State Park
 Mountain Lion Coalition
 Anza Borrego Desert Tours
 Concerned Citizen
 Concerned Citizen
 Concerned Citizen
 Concerned Citizen
 Western Sierra Sportsmen Club
 California Bowmen Hunters
 Sportsman
 Central Valley Sportsmen
 High School Student
 Vice Chairman, San Diego County
 Board of Supervisors
 Valley Fish Farms
 Aquaculturist
 California Aquaculture Association
 Waterfowl Habitat Owners Alliance
 United Sportsmen
 Commercial Salmon Fisherman
 Attorney
 Commercial Fisherman
 Commercial Salmon Fisherman
 Sportsman
 Chairman, San Diego County Fish and
 Wildlife Advisory Committee

Vice President Galletti introduced members of the Commission (he noted that Mr. Murdy was newly appointed and this was his first meeting), its staff, Director Parnell, Deputy Director Fletcher and Denis Smaage of the Attorney General's office.

The Executive Secretary explained that this meeting was a continuation of the Commission's March 7, 1986 meeting held in Sacramento. He noted that this meeting had originally been scheduled for April 4, 1986 at 9:00 a.m. at the same location; however, it had been rescheduled for today. He pointed out that all items originally noticed to be heard on April 4, 1986 had been rescheduled for consideration on April 7, 1986 and that the public had been duly noticed of the change.

1. READING AND APPROVAL OF MINUTES OF FEBRUARY 6-7, 1986.

The Executive Secretary stated that the minutes of the February 6-7, 1986 meeting had been distributed to members of the Commission and the Commission staff knew of no errors or omissions therein and suggested that the minutes be approved as distributed.

correspondence has been received on this proposal and the Department recommends final adoption.

It was then:

MOVED BY MR. TAUCHER, SECONDED BY MR. MURDY, THAT THE FISH AND GAME COMMISSION, PURSUANT TO THE AUTHORITY VESTED BY SECTIONS 200, 202, 205, 210, 219 AND 220 OF THE FISH AND GAME CODE AND TO IMPLEMENT, INTERPRET OR MAKE SPECIFIC SECTIONS 200-202, 203.1, 205-210, 215-222, 5504 AND 5505 OF SAID CODE, HEREBY AMENDS SECTION 4.25, TITLE 14, CAC, REGARDING PROHIBITING THE USE OF FIN FISH FOR BAIT IN STAFFORD LAKE, MARIN COUNTY AS FOLLOWS:

4.25. Bait Fish Use in the North Central District.

Only the following fin fish may be used or possessed for use as bait:

(a) Dead ocean fish.

(b) Golden shiner, fathead minnow, red shiner, mosquitofish, longjaw mudsucker and staghorn sculpin may be used in ~~Marin~~, Napa and Sonoma counties, in Marin County except for Stafford Lake, in Lake County except for the Eel River and its tributaries, and in Lake Mendocino (Mendocino County).

(c) Live threadfin shad, Mississippi silverside and lamprey may be used only at the location where taken.

Authority: Sections 200, 202, 205, 210, 219 and 220, Fish and Game Code.

Reference: Sections 200-202, 203.1, 205-210, 215-222, 5504 and 5505, Fish and Game Code.

PASSED UNANIMOUSLY.

13. AMENDMENT OF SECTION 174, TITLE 14, CAC, RE: PERMITS TO USE GILL NETS OR TRAMMEL NETS FOR COMMERCIAL PURPOSES.

At the Commission's January 3, 1986 meeting in Ventura, it authorized its staff to publish notice of its intent to amend Section 174, Title 14, CAC, regarding permits to use gill nets or trammel nets for commercial purposes. That legal notice has been published. In summary, the existing provisions of subsection 175(j), Title 14, CAC, prohibit the use of gill nets or trammel nets in portions of Fish and Game District 10 between Point Reyes Light House, Marin County and Pigeon Point, San Mateo County, through October 16, 1983. This provision would be deleted as it is no longer valid.

Commissioners were provided with copies of the Department's pre-publication of notice and pre-adoption statements as well as the text of the regulations in strike out and underline format. No correspondence has been received on this proposal, and the Department recommends final adoption.

It was then:

MOVED BY MR. TAUCHER, SECONDED BY MR. MURDY, THAT THE FISH AND GAME COMMISSION, PURSUANT TO THE AUTHORITY VESTED BY SECTIONS 8664.6 AND 8682 OF THE FISH AND

GAME CODE, AND TO IMPLEMENT, INTERPRET OR MAKE SPECIFIC
SECTIONS 1050, 1700, 8568 AND 8680-8683 OF SAID CODE,
HEREBY AMENDS SECTION 174, TITLE 14, CAC, REGARDING
PERMITS TO USE GILL NETS OR TRAMMEL NETS FOR COMMERCIAL
PURPOSES AS FOLLOWS:

CASE #:56-2022-00565405-CU-WM-VTA RECEIPT #: 1220506D94273 DATE PAID : 05/6/22 4:23 PM TOTAL : 435.00 TYPE : EFT

174. Permit to Use Gill Nets or Trammel Nets for Commercial Purposes.

(a) Permit Required.

(1) The owner or operator of a vessel using a gill net or trammel nets shall have obtained a valid gill net/trammel net permit and shall be in possession of said permit when engaged in gill netting or trammel netting activities except as provided under subsection (i). Except as otherwise provided, it is unlawful to fish with a gill net or trammel net unless a permittee is aboard the vessel.

(2) To Whom Issued. The department shall issue permits to the owner or operator of a currently registered commercial fishing vessel who has qualified pursuant to subsection (b).

(3) Where Issued. Permits shall be issued at department offices in Eureka, Menlo Park, Monterey, Long Beach and San Diego.

(b) Qualifications for the Permit. To qualify for a permit, an applicant shall:

(1) Have worked as a crewmember for at least 12 months on vessels using gill nets or trammel nets and shall have worked at least 180 days at sea on such vessels; or

(2) Pass a proficiency examination administered by the department. The proficiency examination shall include written and performance tests which demonstrate knowledge of the proper use of gill nets or trammel nets.

(3) Prove to the director's satisfaction that as the owner or operator of a legally registered commercial fishing vessel, he has landed at least 10,000 pounds of fish during a 12-month period, or has landed fish during a 12-month period for which he was paid at least \$10,000. Only landings of fish caught by the use of gill nets or trammel nets shall be used to satisfy the catch requirements of this subsection; or

(4) Prove to the director's satisfaction that as the owner or operator of a legally registered commercial fishing vessel, he has landed at least 1,000 pounds of fish taken in gill nets or trammel nets in 4 of the 5 license years prior to the date of application; or

(5) Have possessed a permit issued pursuant to this section during the previous season and shall have complied with subsection (f) of these regulations. ~~If a permittee has qualified for a permit pursuant to subsection (b)(5) during the four previous seasons, he may not qualify on the basis of previously possessing a permit, but may qualify pursuant to subsection (b)(1), (b)(2), (b)(3), or (b)(4).~~

(6) Only landings and crewmember experience occurring during the five-year period prior to the date of application shall be used to meet the requirements of subsection (b). The applicant shall supply documentation that he was a legally licensed commercial fisherman when he made the required landings or met the crewmember experience requirements. Crewmember experience shall be documented by fishing records submitted to the department as required by subsection (f), or by a notarized document signed by the owner or operator of vessels on which the applicant has completed the required experience. Landings of fish shall be verified by the submission of copies of landing receipts.

(c) Limitations of Permit. Permits are nontransferable. Not more than one permit shall be issued to any person.

(d) Duration of Permit. Except as otherwise provided, permits issued pursuant to these regulations, shall be in force from April 1 through March 31 of the following year, or if issued after the beginning of such term, for the remainder thereof.

(e) Cost of Permit. The fee for the permit shall be \$50.00.

(f) Records. If fish are landed under the terms of this permit, the permittee shall complete an accurate record of all gill net and trammel net fishing activities under this permit on forms provided by the department. Such records shall be sent to the Fish and Game office in Long Beach, on a monthly basis and must be postmarked no later than the fifth day of the next month. Information required on these forms shall include, but not be limited to:

- (1) Number of swordfish taken.
 - (2) Number of marlin taken.
 - (3) Number of white seabass taken.
 - (4) Names of crewmembers.
 - (5) Such other information as the department may request.
- All fish records shall be deemed confidential.

(g) Conditions of Permit. Provisions of the Fish and Game Code relating to commercial fish except as modified by the provisions of these regulations, shall be a condition of all permits to be fully performed by the holders thereof, their agents, servants, employees or those acting under their direction or control.

(h) Revocation of Permits. A permit may be revoked or canceled by the commission for a period not to exceed one year from the date of revocation upon a conviction for a violation of a provision of Article 5, Chapter 3, Part 3, Division 6 of the Fish and Game Code, or any regulation authorized by this article, or the terms or conditions of this section by the holders thereof, their agents, servants, employees, or those acting under their direction and control.

(i) Exemptions from Permit. The owner or operator of a vessel operating under a permit issued pursuant to Section 163, Title 14, CAC, is not required to possess the permit authorized by this section.

~~(j) Areas with restricted fishing:~~

~~(1) Gill nets and trammel nets shall not be used in that portion of District 10 between the shore and a line extending due south magnetic from the Point Reyes light station, Marin County, out to the 10-fathom contour; from there the line follows the 10-fathom contour east, north and then southeast to the whistle buoy (Duxbury) located approximately 2 miles southeast (153 degrees magnetic) from Duxbury Point, Marin County, then in a straight line easterly (approximately 097 degrees magnetic) to the bell buoy (Bonita) located approximately one mile southwest (209 degrees magnetic) of Point Bonita, Marin County; then in a straight line south (176 degrees magnetic) to a point in about 15 fathoms of water where it intersects a line extending due west magnetic from Mussel Rock, San Mateo County (Mussel Rock is located approximately 2 miles north of the Pacifica Pier); then south following the 15-fathom contour to a point in 15 fathoms of water where it intersects a line extending due west magnetic from Miramontes Point, San Mateo County; then east on that line to the 10-fathom contour and then in a southerly direction following the 10-fathom contour to a point on a line extending due west magnetic from Pigeon Point; then due east to the shoreline at Pigeon Point.~~

~~(2) Depth referenced in subsection (j)(1) shall be those existing at mean high water.~~

~~(k) Subsections (j) and (k) shall be effective through October 16, 1983.~~

Authority: Sections 8664.6 and 8682, Fish and Game Code.

Reference: Sections 1050, 1700, 8568, 8680, 8681, 8682 and 8683, Fish and Game Code.

PASSED UNANIMOUSLY.

State of California

The Resources Agency

Memorandum

To : Executive Secretary
Fish and Game Commission

FISH AND GAME
COMMISSION

Date April 16, 1986
APR 21 10 00 AM '86

From : Department of Fish and Game - Director

Subject: Final Statement for April 7, 1986 Fish and Game Commission Meeting

Attached is a final statement of purpose for regulatory action to amend Section 174, Title 14, CAC, regarding permits to use gill nets for commercial purposes.

for 
Jack C. Parnell
Director

FINAL STATEMENT OF PURPOSE FOR REGULATORY ACTION

(Amend Section 174, Title 14, CAC, re: Permits to use gill nets for commercial purposes)

I. Date of Statement of Purpose (pre-publication of notice):

November 22, 1985

II. Date of Pre-adoption Statement of Purpose: March 10, 1986

III. Date of Final Statement of Purpose: April 15, 1986

IV. Date(s) and Location(s) of Hearing(s):

(a) Final Adoption Hearing: Date: April 7, 1986
Location: San Diego, CA

V. Update: No additions, deletions, modifications or corrections are needed.

VI. Summary of Primary Consideration(s) Raised in Support or Opposition to the Proposed Actions and Reason(s) for Rejecting Those Considerations:

No public comments in support or opposition to the proposed action were received during the notice or hearing process.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission
1416 Ninth Street, Room 207-5
Sacramento, CA 95814

VIII. Tape Number _____

IX. Location of Department Files:

Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814

X. Economic Impact:

The Commission has determined that the proposed changes: (1) will have no effect on housing costs; (2) do not mandate any programs upon local agencies or school districts; (3) involve no increased costs or savings to any local agency or school district, state agency or federal funding to the state; (4) will have no adverse economic impact on small business; and (5) involve no significant cost to private persons or entities.

ATTACHMENTS TO FINAL STATEMENT OF PURPOSEUpdated Informative Digest

Existing regulation (Section 174(b)(5), Title 14, CAC) provides for the renewal of permits to use gill and trammel nets where a permittee possessed a valid permit during the previous permit year (April 1 through March 31) and also provides for requalifying for this permit after four consecutive years of renewal. Section 174(b)(5) specifies that prior to the fifth consecutive permit year, a gill and trammel net permittee must requalify for the gill and trammel net permit in one of four ways:

- 1) demonstrate to the director that he has 12 months of experience (with 180 days spent at sea), as a crewman aboard a gill or trammel net vessel during the previous five years; 2) pass a proficiency examination in the use of gill and trammel nets; 3) demonstrate that, as owner or operator of a legally registered commercial fishing vessel, he landed at least 10,000 pounds or \$10,000 worth of fish taken in gill and trammel nets during the past five years; or 4) demonstrate that as the owner or operator of a legally registered commercial fishing vessel, he landed at least 1,000 pounds of fish taken in gill and trammel nets in 4 of the 5 license years prior to the date of application.

The proposed change to Section 174(b)(5), Title 14, CAC, would delete the requirement that gill and trammel net permittees need to requalify for a permit every five years.

Editorial amendments were also made to delete subsections which are no longer in effect and which, therefore, should be removed from text of the regulations.

Section 174, Title 14, CAC, is amended to read:

174. Permit to Use Gill Nets or Trammel Nets for Commercial Purposes.

(a) Permit Required.

(1) The owner or operator of a vessel using a gill net or trammel nets shall have obtained a valid gill net/trammel net permit and shall be in possession of said permit when engaged in gill netting or trammel netting activities except as provided under subsection (i). Except as otherwise provided, it is unlawful to fish with a gill net or trammel net unless a permittee is aboard the vessel.

(2) To Whom Issued. The department shall issue permits to the owner or operator of a currently registered commercial fishing vessel who has qualified pursuant to subsection (b).

(3) Where Issued. Permits shall be issued at department offices in Eureka, Menlo Park, Monterey, Long Beach and San Diego.

(b) Qualifications for the Permit. To qualify for a permit, an applicant shall:

(1) Have worked as a crewmember for at least 12 months on vessels using gill nets or trammel nets and shall have worked at least 180 days at sea on such vessels; or

(2) Pass a proficiency examination administered by the department. The proficiency examination shall include written and performance tests which demonstrate knowledge of the proper use of gill nets or trammel nets.

(3) Prove to the director's satisfaction that as the owner or operator of a legally registered commercial fishing vessel, he has landed at least 10,000 pounds of fish during a 12-month period, or has landed fish during a 12-month period for which he was paid at least \$10,000. Only landings of fish caught by the use of gill nets or trammel nets shall be used to satisfy the catch requirements of this subsection; or

(4) Prove to the director's satisfaction that as the owner or operator of a legally registered commercial fishing vessel, he has landed at least 1,000 pounds of fish taken in gill nets or trammel nets in 4 of the 5 license years prior to the date of application; or

(5) Have possessed a permit issued pursuant to this section during the previous season and shall have complied with subsection (f) of these regulations. ~~If a permittee has qualified for a permit pursuant to subsection (b)(5) during the four previous seasons, he may not qualify on the basis of previously possessing a permit, but may qualify pursuant to subsection (b)(1), (b)(2), (b)(3), or (b)(4).~~

(6) Only landings and crewmember experience occurring during the five-year period prior to the date of application shall be used to meet the requirements of subsection (b). The applicant shall supply documentation that he was a legally licensed commercial fisherman when he made the required landings or met the crewmember experience requirements. Crewmember experience shall be documented by fishing records submitted to the department as required by subsection (f), or by a notarized document signed by the owner or operator of vessels on which the applicant has completed the required experience. Landings of fish shall be verified by the submission of copies of landing receipts.

(c) Limitations of Permit. Permits are nontransferable. Not more than one permit shall be issued to any person.

(d) Duration of Permit. Except as otherwise provided, permits issued pursuant to these regulations, shall be in force from April 1 through March 31 of the following year, or if issued after the beginning of such term, for the remainder thereof.

-2-

(e) Cost of Permit. The fee for the permit shall be \$50.00.

(f) Records. If fish are landed under the terms of this permit, the permittee shall complete an accurate record of all gill net and trammel net fishing activities under this permit on forms provided by the department. Such records shall be sent to the Fish and Game office in Long Beach, on a monthly basis and must be postmarked no later than the fifth day of the next month. Information required on these forms shall include, but not be limited to:

- (1) Number of swordfish taken.
- (2) Number of marlin taken.
- (3) Number of white seabass taken.
- (4) Names of crewmembers.
- (5) Such other information as the department may request.

All fish records shall be deemed confidential.

(g) Conditions of Permit. Provisions of the Fish and Game Code relating to commercial fish except as modified by the provisions of these regulations, shall be a condition of all permits to be fully performed by the holders thereof, their agents, servants, employees or those acting under their direction or control.

(h) Revocation of Permits. A permit may be revoked or canceled by the commission for a period not to exceed one year from the date of revocation upon a conviction for a violation of a provision of Article 5, Chapter 3, Part 3, Division 6 of the Fish and Game Code, or any regulation authorized by this article, or the terms or conditions of this section by the holders thereof, their agents, servants, employees, or those acting under their direction and control.

(i) Exemptions from Permit. The owner or operator of a vessel operating under a permit issued pursuant to Section 163, Title 14, CAC, is not required to possess the permit authorized by this section.

~~(j) Areas with restricted fishing:~~

~~(1) Gill nets and trammel nets shall not be used in that portion of District 10 between the shore and a line extending due south magnetic from the Point Reyes light station, Marin County, out to the 10-fathom contour; from there the line follows the 10-fathom contour east, north and then southeast to the whistle buoy (Duxbury) located approximately 2 miles southeast (153 degrees magnetic) from Duxbury Point, Marin County, then in a straight line easterly (approximately 097 degrees magnetic) to the bell buoy (Bonita) located approximately one mile southwest (209 degrees magnetic) of Point Bonita, Marin County; then in a straight line south (176 degrees magnetic) to a point in about 15 fathoms of water where it intersects a line extending due west magnetic from Mussel Rock, San Mateo County (Mussel Rock is located approximately 2 miles north of the Pacifica Pier); then south following the 15-fathom contour to a point in 15 fathoms of water where it intersects a line extending due west magnetic from Miramontes Point, San Mateo County; then east on that line to the 10-fathom contour and then in a southerly direction following the 10-fathom contour to a point on a line extending due west magnetic from Pigeon Point; then due east to the shoreline at Pigeon Point.~~

~~(2) Depth referenced in subsection (j)(1) shall be those existing at mean high water.~~

~~(k) Subsections (j) and (k) shall be effective through October 16, 1983.~~

Authority: Sections 8664.6 and 8682, Fish and Game Code.

Reference: Sections 1050, 1700, 8568, 8680, 8681, 8682 and 8683, Fish and Game Code.

Ex. D - 63

STATE OF CALIFORNIA
STD Form 400 (Rev. 8/85)

FACE SHEET

(See Instructions on Reverse)

FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE OFFICE OF ADMINISTRATIVE LAW

CERTIFICATION: I hereby certify that the attached are true and correct copies of regulations adopted, amended or repealed by this agency and that the information specified on this Face Sheet is true and correct.

FISH AND GAME COMMISSION

(AGENCY)

AGENCY OFFICER WITH RULEMAKING AUTHORITY

April 29, 1986

For use of Office of Adm Law

Date:

For use by Secretary of State only

1. AGENCY CONTACT PERSON FOR THIS FILING
(See instructions)

TITLE

TELEPHONE

Harold C. Cribbs, Executive Secretary

(916) 445-5708

2. Type of filing, (check one) ☒ 30-day Review☐ Emergency☐ Certificate of Compliance
(Complete Part 4 below)☐ Regulatory changes resulting from Govt. Code 11349.7 review (Complete Part 6 below)☐ Nonsubstantive changes with nonregulatory effect ☐ Printing Error Correction

3. a. Specify California Administrative Code title and sections as follows:

Title 14

SECTIONS ADOPTED:

SECTIONS AMENDED:

174

SECTIONS REPEALED:

b. The following sections listed in 3a contain modifications to the text originally made available to the public:

CERTIFICATE OF COMPLIANCE (Government Code Section 11346.1(e): The above-named agency officer certifies that this agency complied with the provisions of Government Code Sections 11346.4-11346.8. (Check one)

☐ prior to the emergency adoption☐ within 120 days of the effective date of the emergency adoption of the above-referenced regulations.

Is this filing a resubmittal of a previously disapproved or withdrawn regulation?

☒ No ☐ Yes, if yes, give date(s) of prior submittal(s) to OAL:

Is the filing submitted to carry out amendments or repeals identified in the statement of review completion submitted as a result of the agency's review of regulations administered by it as of June 30, 1980?

☒ No ☐ Yes, if yes, give date statement was submitted to OAL

If these regulations required prior review and approval or concurrence by any of the following agencies, check appropriate box(es)

☐ Fair Political Practices Commission
(Include FPPC approval stamp)☐ Building Standards Commission
(Attach approval)☐ State Fire Marshall (Attach approval)☐ Department of Finance (Attach properly signed Std. 399)☐ Other

(SPECIFY AGENCY)

a. PUBLICATION DATE OF NOTICE IN CALIFORNIA
ADMINISTRATIVE NOTICE REGISTER

January 24, 1986

b. DATE OF FINAL AGENCY ACTION

April 7, 1986

c. DATES OF AVAILABILITY OF MODIFIED REGULATION(S) (GOVT.
CODE SEC. 11346.8(c))

Effective date of regulatory changes: (See Government Code Section 11346.2 and instructions on reverse)

a. ☒ Effective 30th day after filing with the Secretary of State.b. ☐ Effective upon filing with the Secretary of State.c. ☐ Effective on _____ as required or allowed by the following statute(s):d. ☐ Effective on _____ (Designate effective date *earlier than* 30 days after filing with the Secretary of State pursuant to Govt. Code Sect. 11346.2(d).)

Attach request demonstrating good cause for early effective date. Request subject to OAL approval.

e. ☐ Effective on _____ (Designate effective date *later than* the normal effective date for the type of order filed.)

Ex. D - 64

Ventura Superior Court Accepted through eDelivery submitted 05-06-2022 at 09:28:04 AM

CASE #: 56-2022-00565405-CU-WM-VTA RECEIPT #: 1220506D94273 DATE PAID : 05/6/22 4:23 PM TOTAL : 435.00 TYPE : EFT

(1) Subsection (b)(5) of Section 174, Title 14, CAC, is amended to read:

(5) Have possessed a permit issued pursuant to this section during the previous season and shall have complied with subsection (f) of these regulations. ~~If a permittee has qualified for a permit pursuant to subsection (b)(5) during the four previous seasons, he may not qualify on the basis of previously possessing a permit, but may qualify pursuant to subsection (b)(1), (b)(2), (b)(3), or (b)(4).~~

(2) Subsections (j) and (k) of Section 174, Title 14, CAC, are repealed:

~~(j) Areas with restricted fishing:~~

~~(1) Gill nets and trammel nets shall not be used in that portion of District 10 between the shore and a line extending due south magnetic from the Point Reyes light station, Marin County, out to the 10 fathom contour, from there the line follows the 10 fathom contour east, north and then southeast to the whistle buoy (Duxbury) located approximately 2 miles southeast (153 degrees magnetic) from Duxbury Point, Marin County, then in a straight line easterly (approximately 097 degrees magnetic) to the bell buoy (Bonita) located approximately one mile southwest (209 degrees magnetic) of Point Bonita, Marin County; then in a straight line south (176 degrees magnetic) to a point in about 15 fathoms of water where it intersects a line extending due west magnetic from Mussel Rock, San Mateo County (Mussel Rock is located approximately 2 miles north of the Pacifica Pier); then south following the 15 fathom contour to a point in 15 fathoms of water where it intersects a line extending due west magnetic from Miramontes Point, San Mateo County; then east on that line to the 10 fathom contour and then in a southerly direction following the 10 fathom contour to a point on a line extending due west magnetic from Pigeon Point; then due east to the shoreline at Pigeon Point.~~

~~(2) Depth referenced in subsection (j)(1) shall be those existing at mean high water.~~

~~(k) Subsections (j) and (k) shall be effective through October 16, 1983.~~

Authority: Sections 8664.6 and 8682, Fish and Game Code.

Reference: Sections 1050, 1700, 8568, 8680, 8681, 8682 and 8683, Fish and Game Code.

Exhibit E

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Ventura

On 6 / 18 / 2021 before me, Yuphadee Madan, Notary Public
(insert name and title of the officer)

personally appeared Christopher E Williams
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Yuphadee (Seal)

Document: Permit transfer statement

June 18, 2021

CA Dept of Fish and Wildlife
Attn: Debbie Noriega
1740 N. Market Blvd.
Sacramento, CA 95834

Ms. Noriega,

Enclosed, please find the necessary documents, for the transfer of CA Gill Net & Trammel Permit #GGN083, and check # 1376 for \$100.00 transfer fee.

I have forwarded the attachment from Pheng Chang via email that includes Mr. McCorkle's last 20 years of Commercial Fishing landings records.

Thank you for your assistance. My contact information is below, in case further information is needed.

Sincerely,

Michelle D. Williams

805-857-4282
dania@freshfishfanatics.com

FRESH FISH FANATICS
2500 FISH DRIVE
CONCORD, CA 94530
800-357-4322

UnionBank
1001 130 AVE
CONCORD, CA 94520
76-6971220

1376

PAY TO THE ORDER OF
CA Dept of Fish & Wildlife

one hundred & 00/100

\$ 100.⁰⁰

DOLLARS

MEMO permit transfer fee #GGN083

M. Amir Wadi

10013376 1220001495 010285667

21 CLE
STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE
GENERAL GILL/TRAMMEL NET
PERMIT
Valid only when in possession of a
Commercial Fishing License for the
same license year.


D-0031907314-8

General Gill/Trammel Net
Permit Number: GGN083

Commercial Fishing License ID: L17524
GO ID: 1001490128
STATE ID: P060**** CA
MICHAEL M MCCORKLE
6180 VIA REAL UNIT 77
CARPINTERIA, CA 93013

SEX: M HAIR: Blonde EYES: Blue
HT: 6-03 WT: 215 DOB: 11/29/1938
Resident: I have resided in California continuously for the past 9 months.

Doc No: D-0031907314-8
Trans: 000000004208927
295591721

Item	Amount
General Gill/Trammel Net Permit	\$504.25
L&P Permit Type: General Gill/Trammel Net	
L&P Permit ID: GGN083	
Total:	\$504.25

*Includes any applicable application fees, agent handling fees and license buyer surcharge.
Licensees must maintain Gill and Trammel Net Log.

I certify under penalty of perjury under the laws of the State of California that all information on this document is true and correct and that I meet the requirements for these licenses. I understand it is unlawful to make any false statement in this application or to use or possess a license obtained by fraud or deceit (Fishing Game Code §§10502b) and 10504).

X Michael McCorkle
Signature NOT VALID UNLESS SIGNED
LICENSE AND PHOTO IDENTIFICATION MUST BE IN
IMMEDIATE POSSESSION WHILE FISHING
— End of Document D-0031907314-8 —

sent
McCorkle's
original
gillnet
permit

June 3, 2021

To Whom It May Concern:

I, Michael M. McCorkle (#L17524), am hereby requesting the transfer of my current CA General Gill and Trammel Net Permit (#GGN083) to licensed Commercial Fisherman Christopher Max Williams (#L62456).

As evidenced by CA Department of Fish and Wildlife records (see attached) we meet the following requirements:

As Current Permittee, I have:

- Possessed an existing, valid General Gill / Trammel Net Permit (included with this package)
- Provided satisfactory evidence that I have landed fish for commercial purposes in 15 of the preceding past 20 years. (See CA DFW records)

The applicant:

- (1) has worked as a crewmember for at least 12 months on a vessel using gill nets or trammel nets and worked at least 180 days at sea on such vessels (as evidenced by the attached sworn statement from the Vessel Owner, and by the attached CA DFW log books indicating such)
- (2) has attached proof from the Owner/Operator of a registered commercial fishing vessel that they have landed at least 10,000 pounds of fish during a 12 month period (records submitted to CA DFW via E-Tix, as required and also attached with this package)
- (3) landings and/or crewmember experience occurred during the 5 year period prior to the date of this application (see attached Applicants dates of fishing licenses and landings/documentation mentioned above)

Michael M. McCorkle

Michael M. McCorkle

6-4-21 (date)



Notarized by:

Tammy McQuilliams *Tammy McQuilliams* 6/4/2021 (date)

June 3, 2021

To Whom It May Concern:

I, Christopher Max Williams (#L62456) am hereby requesting receipts of the transfer CA General Gill and Trammel Net Permit (#GGN083).

As evidenced by CA Department of Fish and Wildlife records (see attached) we meet the following requirements:

The Current Permittee has:

- Possessed an existing, valid General Gill / Trammel Net Permit (included with this package)
- Provided satisfactory evidence that I have landed fish for commercial purposes in 15 of the preceding past 20 years. (See CA DFW records)

I, the applicant:

- (1) has worked as a crewmember for at least 12 months on a vessel using gill nets or trammel nets and worked at least 180 days at sea on such vessels (as evidenced by the attached sworn statement from the Vessel Owner, and by the attached CA DFW log books indicating such)
- (2) has attached proof from the Owner/Operator of a registered commercial fishing vessel that they have landed at least 10,000 pounds of fish during a 12 month period (records submitted to CA DFW via E-Tix, as required and also attached with this package)
- (3) landings and/or crewmember experience occurred during the 5 year period prior to the date of this application (see attached Applicants dates of fishing licenses and landings/documentation mentioned above)

Christopher Max Williams

Max Williams

6/4/2021 (date)



Notarized by:

Tammy McQuilliams Tammy McQuilliams 6/4/2021 (date)

June 18, 2021

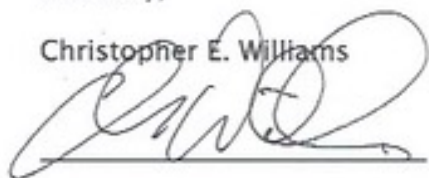
To Whom It May Concern:

I, Christopher E. Williams, (#L55625) confirm that Christopher Max Williams, (#L62456) has been working as a deckhand on my Commercial Fishing Vessel (#36135) for longer than 12 months (since he's been licensed) and has participated in landing all of the gill net caught fish during that time.

My E-tix show these landings, and fishing logs submitted to the Department (and copied and attached here) attest to these facts also.

Sincerely,

Christopher E. Williams



6-18-21

(owner/operator F/V Linde)

Ventura Superior Court Accepted through eDelivery submitted 05-06-2022 at 09:28:04 AM

Exhibit F

CASE #:56-2022-00565405-CU-WM-VTA RECEIPT #: 1220506D94273 DATE PAID : 05/6/22 4:23 PM TOTAL : 435.00 TYPE : EFT



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 License and Revenue Branch
 PO Box 944209
 Sacramento, CA 94244-2090
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
 CHARLTON H. BONHAM, Director



Certified Mail

September 23, 2021

Mr. Christopher M. Williams
 2040 Pavin Dr.
 Oxnard, CA 93036

Subject: NOTICE OF DENIAL FOR A GENERAL GILL/TRAMMEL NET PERMIT

Dear Mr. Williams:

This letter is in response to your letter received by the California Department of Fish and Wildlife (Department) on July 25, 2021, requesting the Department approve a transfer of a General Gill/Trammel Net Permit (GGTNP), Permit Number GGN083, from Mr. Michael M. McCorkle to you.

Authority-Qualifications for the Permit

Section 174(b) of the California Code of Regulations (CCR), Title 14 Section 174(b), outlines the requirements to qualify for a permit. They are as follows:

174(b) Qualifications for the Permit. To qualify for a permit, an applicant shall:

- (1) Have worked as a crewmember for at least 12 months on vessels using gill nets or trammel nets and shall have worked at least 180 days at sea on such vessels; or*
- (2) Pass a proficiency examination administered by the department. The proficiency examination shall include written and performance tests which demonstrate knowledge of the proper use of gill nets or trammel nets.*
- (3) Prove to the director's satisfaction that as the owner or operator of a legally registered commercial fishing vessel, he has landed at least 10,000 pounds of fish during a 12-month period, or has landed fish during a 12-month period for which he was paid at least \$10,000. Only landings of fish caught by the use of gill nets or trammel nets shall be used to satisfy the catch requirements of this subsection; or*
- (4) Prove to the director's satisfaction that as the owner or operator of a legally registered commercial fishing vessel, he has landed at least 1,000 pounds of fish taken in gill nets or trammel nets in 4 of the 5 license years prior to the date of application; or*
- (5) Have possessed a permit issued pursuant to this section during the previous season and shall have complied with subsection (f) of these regulations.*

Mr. Christopher M. Williams

September 23, 2021

Page Two

(6) Only landings and crewmember experience occurring during the five year period prior to the date of application shall be used to meet the requirements of subsection (b). The applicant shall supply documentation that he was a legally licensed commercial fisherman when he made the required landings or met the crewmember experience requirements. Crewmember experience shall be documented by fishing records submitted to the department as required by subsection (f), or by a notarized document signed by the owner or operator of vessels on which the applicant has completed the required experience. Landings of fish shall be verified by the submission of copies of landing receipts.

Records

Pursuant to CCR, Title 14, Section 174(f), each permittee shall complete and submit a fishing activity record of all gill net and trammel net fishing activities using a Gill and Trammel Net Log (DFG 174 10/89) provided by the Department.

Documentation Submitted to the Department

- A notarized General Gill/Trammel Net Permit Transfer letter requesting to transfer Michael McCorkle's GGTNP to Christopher M. Williams received on June 25, 2021.
- Notarized documents of crewmember experience signed by Christopher E. Williams owner/operator of *FV Linde* (FG36135), on behalf of Christopher M. Williams received on June 25, 2021, and August 24, 2021.
- Copies of California Department of Fish and Wildlife's Gill and Trammel Net Fishing Logs and Transportation Receipts from December 2020 through May 2021 in Christopher E. Williams's name and commercial fishing identification number.
- Michael McCorkle's original 2021-2022 GGTNP.
- Copy of Christopher M. Williams's 2021-2022 Commercial Fishing License.
- Transfer fee for the GGTNP of \$100.

Department Findings

The notarized documents of crewmember experience signed by Christopher E. Williams on behalf of Christopher M. Williams show that you have met the crewmember experience requirement pursuant to Section 174(b)(1). I.e., this documentation shows that "worked as a crewmember for at least 12 months on vessels using gill nets or trammel nets and...worked at least 180 days at sea on such vessels." (Section 174(b)(1).) But, the Department did not receive documentation showing that you have met the landing requirements described in Section 174, subdivision (b)(3) or (b)(4), or the permitting requirements described in Section 174(b)(5). Specifically, the Gill and Trammel Net Fishing Logs and Transportation Receipts you submitted to the Department to satisfy the landings requirements described in subdivisions (b)(3) and (b)(4) that were recorded under Christopher E. Williams's name and commercial fishing identification number are not landing receipts. Pursuant to Section 174(b)(6), "Landings of fish shall be verified by the submission of copies of landing receipts." Likewise, you did not submit, nor does the Department have any record of you possessing, a permit issued pursuant to Section 174 during the previous season as required in Section 174(b)(5).

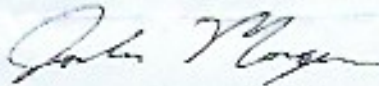
Mr. Christopher M. Williams
September 23, 2021
Page Three

Department Determination

Based on the information provided, the Department is denying your request to transfer Michael McCorkle's 2021-2022 GGNTF to you. Although you provided documentation showing that you meet the crewmember requirements described in Section 174(b)(1), you did not provide additional supporting evidence showing that you meet the landing requirements described in Section 174(b)(3) or (b)(4), or the permitting requirements described in Section 174(b)(5).

If you have any questions or require further assistance, please contact Ms. Debbie Noriega at (916) 928-5817 or Debbie.Noriega@wildlife.ca.gov.

Sincerely,



Joshua Morgan, Chief
License and Revenue

cc: Mr. Michael McCorkle
6180 Via Real Unit 77
Carpinteria, CA 93013

Ms. Debbie Noriega
California Department of Fish and Wildlife
Sacramento, CA

Ventura Superior Court Accepted through eDelivery submitted 05-06-2022 at 09:28:04 AM

Exhibit G

CASE #:56-2022-00565405-CU-WM-VTA RECEIPT #: 1220506D94273 DATE PAID : 05/6/22 4:23 PM TOTAL : 435.00 TYPE : EFT



October 15, 2021

Mr. Joshua Morgan
Branch Chief
License and Revenue Branch
California Department of Fish and Wildlife
P.O. Box 944209
Sacramento, CA 94244-2090

Ms. Debbie Noriega
Commercial Fishing License Analyst
License and Revenue Branch
California Department of Fish and Wildlife
P.O. Box 944209
Sacramento, CA 94244-2090

Dear Branch Chief Morgan and Ms. Noriega:

I am an attorney with Pacific Legal Foundation, a public interest legal organization that fights for individual liberty and economic opportunity for all Americans. Pacific Legal Foundation is keenly interested in ensuring that all Americans have the opportunity to pursue their chosen careers free from erroneous and burdensome regulations.

I write this letter on behalf of Pacific Legal Foundation and in the public interest.

It has come to our attention that the Department is now interpreting its regulations at 12 CCR § 174 to require applicants for gill/trammel net permit transfers to meet certain landing or permit requirements. This new interpretation is legally untenable and is inconsistent with the plain language of California Fish and Game Code Section 8681.5(b), which explicitly authorizes the transfer of gill/trammel net permits.

One fisherman, Mr. Christopher M. Williams, was denied a permit transfer based on this new interpretation. In the letter conveying its denial, the Department alleged that Mr. Williams did not meet all the requirements for a permit transfer found at 14 CCR § 174(b). In particular, the Department claimed that Mr. Williams did not provide documentation that he met "the landing requirements described in Section 174,

subdivision (b)(3) or (b)(4), or the permitting requirements described in Section 174(b)(5)."

A permit transfer is the only legal way for individuals without pre-issued permits to participate in the commercial gill/trammel net industry. California Fish and Game Code Section 8681.5 states that "the department shall issue no new gill net or trammel net permits," but provides for the transfer of existing permits "to any person otherwise qualified under the regulations pursuant to § 8682."

But the Department's new interpretation of its longstanding regulations has illegally eliminated this sole route to entry. Per 12 CCR § 174(b)(3)-(b)(4) and (b)(5), an applicant for a permit transfer must either meet certain landing requirements, which can only be satisfied by the use of gill or trammel nets, or already possess a permit. These requirements effectively bar the entry of new participants, as they require transfer permit applicants to undertake an activity (fishing with gill/trammel nets) which cannot legally be done without a permit.

The Department's new interpretation effectively destroys the economic opportunity of the next generation of fishermen. This is contrary not only to the plain language of the statute, but also common sense.

The Department's Interpretation of Fish and Game Code § 8681.5(b) is Contrary to the Principles of Statutory Interpretation

Proper statutory interpretation begins with the text of the statute itself. *California Charter Schs. Ass'n. v. Los Angeles Unified Sch. Dist.*, 345 P.3d 911, 920 (Cal. 2015). Both courts and agencies are to remain true to the plain language of the statute, only deviating from a literal construction to avoid absurd results. *Id.* Although courts generally give deference to an agency's interpretation of a statute, the agency's interpretation is not binding. *Yamaha Corp. of Am. v. State Bd. of Equalization*, 960 P.2d 1031 (Cal. 1998). The degree of deference given by a court is situational, and depends in part on whether the agency has "arrived at the correct interpretation." *Bonnell v. Medical Bd.*, 82 P.3d 740, 745 (Cal. 2003). Courts will not defer to an agency interpretation that is "clearly erroneous." *Id.*

California Fish and Game Code Section 8681.5(b) provides for the transfer of a permit to applicants who are "otherwise qualified." "Otherwise" in common parlance means "in a

different way or manner.”¹ Here, the use of the word “otherwise” distinguishes between permit issuance on the one hand and permit transfers on the other, indicating that the legislature did not want the Department to mechanically apply the permit issuance requirements to transfers. Indeed, a mechanical application of the permit issuance regulations to transfers creates absurd and perverse results in violation of *Yamaha* and *Bonnell*, as it would require applicants to engage in the very harm the legislature wanted to eliminate: commercial gill/trammel net fishing without a permit. This interpretation is “clearly erroneous.”

Moreover, the Department’s interpretation ignores the statute’s history. California Fish and Game Code Sections 8681 and 8682 were enacted in 1980 when new gill/trammel net permits were still being issued and prior to the provision on permit transfers. *See* 1980 Cal. Stat. 2781-82. But in 1985 the legislature decided to place a moratorium on the issuance of new permits, providing instead for permit transfers. Cal. Fish and Game Code § 8681.5 (West 1985). Requiring landings accomplished with gill and/or trammel nets is consistent in a context where new permits are being issued, but is entirely inconsistent where only permit transfers are allowed. The Department’s requirements to the contrary are simply illogical and in tension with history.

The Department’s Regulations are Contrary to Common Sense

Finally, the Department’s regulations are contrary to common sense. It cannot be the case that an applicant only qualifies for a permit transfer by engaging in an activity that is illegal without the very permit they are seeking in the first place. But that is precisely the scenario the Department has created under the current regulatory scheme. Transfer applicants are required to show proof of landings using gill/trammel nets, but can only legally engage in this activity with a permit. This interpretation is untenable.

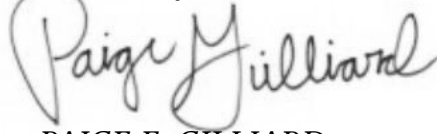
Additionally, applying the regulations in this way results in an effective ban on entry into the commercial gill/trammel net fishing industry. The statute’s text and history makes clear that the legislature intended to regulate the fishery, not destroy economic opportunity for fishermen. But the Department’s interpretation of its regulations have done just that.

¹ “Otherwise,” Merriam Webster, Eleventh Edition, <https://www.merriam-webster.com/dictionary/otherwise> (accessed Oct. 2, 2021).

Therefore, the Department should not require permit transfer applicants to meet the requirements in 12 CCR § 174(b)(3)-(b)(4) and (b)(5).

Thank you for your prompt attention to this issue. I look forward to discussing the Department's regulations with you further. Responses may be directed to Pacific Legal Foundation, 555 Capitol Mall, Suite 1290, Sacramento, CA 95814. I can also be reached by phone at 916-419-7111, and by email at pgilliard@pacificlegal.org.

Sincerely,

A handwritten signature in black ink that reads "Paige E. Gilliard". The signature is written in a cursive, flowing style.

PAIGE E. GILLIARD
Attorney

Ventura Superior Court Accepted through eDelivery submitted 05-06-2022 at 09:28:04 AM

Exhibit H

CASE #:56-2022-00565405-CU-WM-VTA RECEIPT #: 1220506D94273 DATE PAID : 05/6/22 4:23 PM TOTAL : 435.00 TYPE : EFT



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 License and Revenue Branch
 P.O. Box 944209
 Sacramento, CA 94244-2090
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
 CHARLTON H. BONHAM, Director



November 29, 2021

Ms. Paige E. Gilliard
 Pacific Legal Foundation
 555 Capitol Mall, Ste. 1290
 Sacramento, CA 95814

Subject: **GENERAL GILL/TRAMMEL NET PERMIT TRANSFER PROVISIONS**

Dear Ms. Gilliard:

This letter is in response to your letter dated October 15, 2021 ("Letter").

In your Letter, you suggest that the Department of Fish and Wildlife ("Department") "should not require permit transfer applicants to meet the requirements in 1[4] CCR § 174(b)(3)-(b)(4) and (b)(5)," hereinafter, "Section 174," because "The Department's new interpretation of its longstanding regulations has illegally eliminated" the sole way that a fisher can obtain a nontransferable gill net/trammel net permit ("Permit") and enter the fishery. As explained below, while the Department recognizes that Section 174 strictly limits who may obtain a Permit through a transfer, the Department strongly disagrees that its interpretation of Section 174, subdivisions (b)(1)-(b)(5), is "illegal[.]"

In applying Section 174, subdivisions (b)(1)-(b)(5), the Department is following the express regulatory language adopted by the Fish and Game Commission—and not the Department¹, as your letter repeatedly states—over 35 years ago² pursuant to Fish and Game Code section 8682 ("Section 8682").³ The Department cannot now unilaterally disregard this regulation without violating Fish and Game Code section 8681.5, subdivision (b) ("Section 8681.5(b)"), which authorizes permit transfers to persons "otherwise qualified under the regulations adopted pursuant to Section 8682" (i.e.,

¹ The Fish and Game Commission, established pursuant to Article IV, Section 20, subdivision (b) of the California Constitution, is a separate and distinct entity from the Department, which was established pursuant to the Fish and Game Code.

² Section 174 became effective in 1981. The Fish and Game Commission amended Section 174, subdivisions (b)(2)-(b)(4) in 1982 and subdivision (b)(5) in 1986, but has not amended these subdivisions since then.

³ Section 8682, subdivision (a) states, "The commission shall establish regulations for the issuance of gill net and trammel net permits as necessary to establish an orderly gill net and trammel net fishery. In promulgating regulations, the commission shall consider recommendations of the gill net and trammel net advisory committee created pursuant to subdivision (b). The regulations shall include, but are not limited to, a requirement that persons being granted a permit have had previous experience as a crewmember of a vessel using gill nets or trammel nets or have successfully passed a proficiency test administered by the department, under such regulations as the commission shall prescribe."

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November 29, 2021
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Section 174) and the express transfer provisions in Section 174. The Department must implement the plain language of Section 174 as it is written.

Moreover, your arguments for why the Department should disregard duly promulgated regulatory language in Section 174(b)(3)-(b)(5) are not persuasive. Notably, you do not claim that the Department is now misinterpreting transfer provision language in Section 174, subdivisions (b)(1)-(b)(5). Instead, you claim that language in Section 8681.5(b) "provides for the transfer of a permit to applicants who are 'otherwise qualified'" (i.e., qualified in a different way or manner from fishers who met initial qualifications). Yet, your analysis fails to even acknowledge the rest of Section 8681.5(b) following "otherwise qualified," which I have emphasized below:

Notwithstanding subdivision (a) or Section 8681, any person who has an existing, valid permit issued pursuant to Section 8681, and presents to the department satisfactory evidence that he or she has taken and landed fish for commercial purposes in at least 15 of the preceding 20 years, may transfer that permit to any person otherwise qualified **under the regulations adopted pursuant to Section 8682 upon payment of the fee prescribed under Section 8683.**

In other words, section 8681.5(b) requires a transferee to be otherwise qualified pursuant to Section 174(b), which is the relevant regulation adopted by the Fish and Game Commission pursuant to Section 8682.⁴ Neither Section 8681.5, nor any other statute, states that the Department should approve transfers to transferees who are qualified in a different way or manner from fishers who met initial qualifications. Thus, by applying Section 174(b), the Department has been fully complying with Section 8681.5(b) in reviewing transfer requests.

Lastly, you argue that the Department's application of Section 174 is "contrary to common sense," in part because "applying the regulations in this way results in an effective ban on entry into the commercial gill/trammel net fishing industry" and that "The statute's text and history makes clear that the legislature intended to regulate the fishery, not destroy economic opportunity for fishermen." While the pool of eligible transferees was larger when the Fish and Game Commission promulgated Section 174, subdivisions (b)(3)-(b)(5) in the 1980s, it is true that except in unusual circumstances, section 174 no longer provides a way for fishers to obtain a Permit.

But while the Legislature might not have intended, as you suggest, to eventually effectively ban entry into the commercial gill/trammel net fishing industry, you have not provided, nor is the Department aware of, any Legislative materials, e.g., legislative analyses or similar materials, to support this theory. And most importantly, the

⁴ Section 8682 is cited as authority in three sections of California Code of Regulations, title 14: sections 1.48 and 1.85, which address the configurations of gill nets and trammel nets, and Section 174, which is the only gill net/trammel net permitting regulation.

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Page 3

Department is unaware of any express statutory language stating this intent. Alternatively, it is also possible that the Legislature intended to strictly limit Permit transfers, including transfers to persons entering the fishery, since it deemed the Permit to be "nontransferable" and limited who could obtain permits initially. (Fish & G. Code, § 8681, subd. (a).) Accordingly, Section 174, subdivision (b) would be consistent with this intent by phasing out transfers. Either way, Section 174, subdivision (b), still regulates Permit transfers, and the Department is obligated to follow it. The Department declines your invitation to disregard the plain language of the regulation.

If you believe Section 174 should be amended to allow greater participation in the fishery, you may petition the Fish and Game Commission for an amendment. Directions for petitioning the Commission can be found at <https://fgc.ca.gov/Regulations/Petition-for-Regulation-Change>.

Please do not hesitate to contact me at the above address or by email at Joshua.Morgan@Wildlife.Ca.Gov if you have any additional questions or concerns.

Sincerely,



Joshua Morgan

cc: Ms. Melissa Miller-Henson
Fish and Game Commission
Sacramento, CA

Ms. Debbie Noriega
California Department of Fish and Wildlife
Sacramento, CA