



- (A) Requests that the Department ask other states to implement more restrictive trap rules or to relax existing trap regulations by eliminating trap limits.

*Response: Hagfish in California are state managed. As with most marine species which are fished and which occur in waters adjacent to more than one state, it is the responsibility and discretion of each state to establish regulations based on its assessment of what would allow a sustainable fishery for that species in that state. Thus, regulations may differ from state to state. The trap limits referred to by Mr. Lee are set in Fish and Game code and are outside the jurisdiction of the Commission. The barrel trap limit in the adopted regulation is designed to be equivalent to the statutory bucket trap limit.*

- 2) Craig Thommson, Jason Spurgeon, Nick Hofland, Christine Montgomery, Charles Brown, Milt Harris, 9/13/15 (written)

- (A) Support the adoption of 40-gallon barrel traps for the hagfish fishery.

*Response: Support noted. The Commission adopted the proposed regulation allowing the use of barrel traps to take hagfish.*

- 3) Brad Wilcox, 9/30/15 (written)

- (A) Supports the adoption of 40 gallon barrel traps for the hagfish fishery.

*Response: Support noted. The Commission adopted the proposed regulation allowing the use of barrel traps to take hagfish.*

- (B) Greater volume in the trap will minimize overcrowding which can result in unnecessary dead loss.

*Response: Results from the testing of experimental gear support this comment.*

- (C) Limiting the allowable number of barrels on the basis of volumetric equality to the existing gear does not seem completely justified. Increasing the volume of the trap by eight times does not mean it will catch eight times more fish. There is a lack of evidence to prove that it will catch eight-fold, therefore we should not assume

that its fishing potential is eight-fold. When proposing a change in a trap size and design, one shouldn't assume that its volume to catch potential is linear without proper data to prove it. Nobody in California has used the barrels in the manner proposed and recorded results. Maybe 25 barrels is all we need to maintain similar landings, maybe we'll catch more, but a fisherman should not have to suffer the hardship of investing himself in gear to better the fishery, only to find out he can't catch what he could with buckets.

*Response: Results from the testing of experimental gear indicate that fish take is at least as productive as the current bucket method.*

- (D) The reason for increasing the traps' volume is not necessarily to catch more fish, but to create a better environment for the fish, thus better quality and life longevity, which is essential to its marketability. When the fishing gets good and buckets get overcrowded, it results in dead fish, not the bountiful catch it should have been with proper gear. This should be the main driver in this consideration.

*Response: Results from the testing of experimental gear support this comment.*

- (E) This fishery has been poorly managed in the fact that we have been forced to use a trap with a high potential for dead loss. Fixing this bad design should be the motivating factor in this proposal even if it requires change in the legislation.

*Response: Fish and Game Code Section 9001.6 states that Korean traps and bucket traps may only be used for the hagfish fishery. It does not limit the hagfish fishery to only these types of traps. Other finfish traps may be used to take hagfish. The Commission does not have the authority to amend statutes.*

- (F) There are many other ways to regulate overall take if it is proven that protection is necessary for the health of the fishery.

*Response: Comment noted.*

- (G) Maybe a good way to collect data would be to permit at least 1 boat in each hagfish port to trial larger traps and be required to use a common ground lines as proposed.

*Response: Reject: Experimental fishing permits are outside the scope of the proposed regulation.*

- (H) More consideration needs to be given to the limitation of two ground lines. On my boat, currently we fish five ground lines with 25-50 buckets each. This allows us to spread out our gear, minimizing fishing pressure geographically. It's also a matter of what we can safely haul at once, and less massive entanglement issues.

*Response: Accept in part. The regulation has been revised to allow for a maximum of three ground lines.*

- (I) We would like to see the final outcome be fair, 30 barrels with a three ground line maximum would be a better start.

*Response: Accept in part. The regulation has been revised to allow for a maximum of three ground lines with a total of 25 barrels.*

- (J) This proposal's 25 barrel allocation would be four times more stringent than other west coast states. That's not fair.

*Response: The barrel trap capacity (1000 gal.) in the adopted regulation is designed to be equivalent to the statutory bucket trap limit.*

4) Dennis Peck, 10/1/15 (written)

- (A) The proposed configuration of two ground lines and up to 25 barrels will not work on 95 percent of the vessels out of Morro and Port San Luis because of the size and configuration of the vessel. Spacing on the ground line would have to be quite long for the gear to fish in a profitable manner. The likelihood of tangles without the addition of intermediate anchors and longer ground would be yet another cost to fishermen with the smallest profit margin.

*Response: An experimental gear permitted vessel is fishing 25 barrels on two ground lines and has shown that this method is profitable, without increasing gear costs. The regulation has been revised to allow for a maximum of three ground lines.*

- 5) Craig Thommson, 10/7/15 (oral)
- (A) Support the proposed use of barrel traps to take hagfish. Barrel traps provide for overall sustainability: reduced dead loss; fish are healthier when landed and when received in Korea; smaller, unmarketable hagfish escape; reduced number of plastic items in the water; and reduced number of lines in the water.
- Response: Support noted. The Commission adopted the proposed regulation allowing the use of barrel traps to take hagfish.*
- 6) Brad Wilcox, 10/05/15 (written)
- (A) Suggested two math equations to calculate the number of barrels based on the average catch of barrels and bucket traps as reported in the Department's evaluation of the experimental gear.
- Response: Comment noted, however, one of the input variables is not comparable to practices conducted during commercial fishing. The catch per bucket came from two Department sponsored studies, one of which under-baited each trap to minimize catch.*
- (B) 25 barrels is not fair.
- Response: See Department response Wilcox (3)(I and J).*
- (C) Every fisherman is concerned about the two ground lines.
- Response: The regulation has been revised to allow for a maximum of three lines.*
- (D) Barrels are a more sustainable trap design for this fishery.
- Response: Comment noted.*
- 7) Nick Hofland, 10/7/15 (oral)
- (A) Support the proposed use of barrel traps to take hagfish. The proposed regulation will provide benefits regarding whale entanglements and lost fishing gear.
- Response: Support noted. The Commission adopted the proposed regulation allowing the use of barrel traps to take hagfish.*

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:  
California Fish and Game Commission  
1416 Ninth Street  
Sacramento, California 95814

VII. Location of Department Files:

Department of Fish and Wildlife  
1416 Ninth Street  
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

No alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

(b) No Change Alternative:

If the proposed regulation is not implemented, fishermen will continue to use current, legal, 5-gallon bucket or Korean traps on long ground lines. Possible gear interactions or gear loss would continue in areas that are used by multiple fisheries. The risk for marine mammal entanglements (due to the number of vertical lines used) would not be reduced.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

IX. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting

Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulation will offer commercial hagfish fishermen an option to use fishing gear that could reduce financial loss related to lost fishing gear.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California or any benefits to the health and welfare of California residents or worker safety.

The Commission does anticipate possible benefits to the State's environment due to the anticipated reduction in lost fishing gear.

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

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The use of the proposed trap is voluntary. However, should a fisherman choose to change gear types, the approximate cost of one barrel trap is \$60, ground line (including buoy and two weights) cost could range from \$75 to \$150. Based on the current minimum wage, the cost for labor to construct new traps is estimated to be \$27.00 per trap.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to

be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

(h) Effect on Housing Costs: None.

## **Updated** Informative Digest/Policy Statement Overview

Current statutes provide that Pacific hagfish, *Eptatretus stoutii*, (hagfish) may be taken by Korean style traps or 5-gallon bucket traps; specify the maximum number of traps allowed by trap type; require a general trap permit; prohibit possession of other species or gear while targeting or having in possession hagfish, and prohibit the use of popups on buoy lines for bucket and Korean traps (Sections 9000.5, 9001, 9001.6, Fish and Game Code). Fish and Game Code subsection 9001.6(a) is only a limitation on the use of Korean and bucket traps, not a limitation on the type of gear that may be used to take hagfish. Current regulation provides that all escapement holes, except for the entrance funnel, must have a minimum diameter of 9/16 inch [Section 180.6, Title 14, California Code of Regulations (CCR)] to minimize take of immature hagfish.

### Proposed Regulation

The proposed changes to Section 180.6, Title 14, CCR, will allow hagfish to be taken in 40-gallon barrel traps and will allow the use of up to two ground lines and up to 25 barrel traps per vessel. The proposed regulation specifies that if using barrel traps, no other trap type may be used or possessed aboard the vessel, and popups are not authorized for use with buoy lines attached to barrel traps.

### BENEFITS OF THE PROPOSED REGULATIONS

The proposed regulations could reduce or eliminate negative interactions with cetaceans and other fishing gear, and lost fishing gear, particularly in areas utilized by multiple fisheries. The larger capacity of this trap type could reduce stress or mortality of captured hagfish due to crowding.

Adoption of sustainable fishing regulations including gear type provides for the maintenance of sufficient fish populations and ensures their continued existence.

### EVALUATION OF INCOMPATIBILITY WITH EXISTING REGULATIONS:

Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate the commercial take of finfish using traps (Sections 8403 and 9022, Fish and Game Code). No other State agency has the authority to promulgate commercial fishing regulations. The proposed regulations are compatible with Sections 180, 180.2, 180.4 and 180.5, Title 14, CCR, which address other aspects of commercial take of finfish using traps. The Commission has searched the CCR for any regulations regarding the use of traps for the commercial take of hagfish and has found no such regulation; therefore the Commission has concluded that

the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

**At its October 7, 2015 meeting, the Commission adopted the proposed regulations with a revision to the maximum number of ground lines that may be used from two to three. The revised proposed regulation was made available for a 15-day written comment period October 14-29, 2015.**

**There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.**