

## COMMITTEE STAFF SUMMARY FOR NOVEMBER 9, 2021 MRC

**3. RECREATIONAL TAKE OF CLAM AND OTHER INVERTEBRATES****Today's Item**Information Action 

Receive DFW update on review of hydraulic pump gear ban adopted through emergency regulation and consider a potential committee recommendation for the regular rulemaking scheduled for Dec 2021.

**Summary of Previous/Future Actions**

- FGC adopted emergency regulations Feb 10, 2021; Webinar/Teleconference
- FGC referred topic to MRC to consider options for longer-term regulations Apr 14, 2021; Webinar/Teleconference
- DFW update on hydraulic pump gear ban Jul 21, 2021; MRC, Webinar/Teleconference
- FGC re-adopted emergency regulations Oct 14, 2021; Webinar/Teleconference
- **Today's update on hydraulic pump gear ban Nov 9, 2021; MRC, Webinar/Teleconference**
- Notice hearing for regular rulemaking Dec 15-16, 2021; Webinar/Teleconference
- Discussion hearing Feb 16-17, 2022; Sacramento
- Adoption hearing Apr 20-21, 2022; Monterey/Santa Cruz area

**Background**

In Feb 2021, FGC adopted an emergency rulemaking to prohibit the use of hydraulic pump gear for recreational take of clam and associated species (sand crab and shrimp), clarify permissible methods for the take of those species, and require each individual harvester to store their catch separately from others to support enforcement of individual bag and possession limits. The emergency action was taken in response to DFW observations and concerns that hydraulic hand pumps could facilitate overharvesting of clams, increase risk of illegal commercialization of gaper clam, and cause damage to the estuarine environment where recreational clamming occurs, particularly during a time of increased participation concurrent with the COVID-19 pandemic. The emergency regulations went into effect on Mar 8, 2021 and were readopted by FGC in Oct 2021.

At the emergency hearing, pump gear users requested FGC consider alternatives to a total ban on this equipment; FGC referred the topic to MRC in Apr 2021 to explore these requests while emergency regulations were in effect. A regular rulemaking (also called a certificate of compliance) to make the emergency regulations permanent was scheduled to begin in Dec 2021 to allow time for DFW to evaluate the gear and consider potential options for longer-term regulations.

In Jul 2021, MRC received an update from DFW regarding two months of field observations and creel, or angler, surveys conducted at clamming beds. Wildlife officers indicated that the

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emergency regulations were effective at reducing the use of hydraulic pumps, and the requirement to store catch separately improved enforcement of bag limits and discouraged illegal commercialization.

For today's meeting, DFW provides a detailed summary of creel survey outcomes; in particular, surveyed clammers who provided an opinion supported prohibiting pumps by a nearly 3 to 1 margin (Exhibit 1). DFW acknowledges that the impacts of hydraulic pump gear compared to traditional take methods is uncertain; however, because the fishery has been conducted sustainably for decades using traditional methods, hydraulic pump gear has unknown impacts and facilitates illegal take, and fishery participants support the ban, DFW recommends continuing the current emergency regulations through a regular rulemaking.

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

**FGC staff:** Support continuing the emergency regulations through a regular rulemaking as recommended by DFW and scheduled to commence in Dec 2021, and encourage DFW to evaluate the gear and identify any reasonable conditions where authorizing its use may be justified.

**DFW staff:** Continue the emergency regulations for harvest of clam, sand crabs, and shrimp through a regular rulemaking.

**Exhibits**

1. [DFW update](#)

**Committee Direction/Recommendation**

The Marine Resources Committee recommends that the Commission: (1) Support continuing the emergency regulations for harvest of clams, sand crabs, and shrimp in the regular rulemaking scheduled to commence in December 2021, and (2) encourage the Department to evaluate the gear to identify any reasonable conditions where authorizing its use may be justified.

**Department of Fish and Wildlife update: Certificate of Compliance Rulemaking  
Re: Recreational Clam, Sand Crab, and Shrimp Gear Specifications**

**Marine Resources Committee Meeting  
California Fish and Game Commission**

**Summary of Proposed Rulemaking**

This certificate of compliance rulemaking converts temporary emergency regulations affecting the recreational harvest of clams and other invertebrates to standard regulations. These regulations:

- Prohibit the use of hydraulic pump gear to harvest clams and other invertebrates and prohibit possession of hydraulic pump gear within 100 yards of any place marine invertebrates may be present.
- Prohibit the possession of hydraulic pump gear concurrently with any clam.
- Require each individual to keep the clams they harvested in a separate container from clams harvested by others.
- Clarify existing regulations that require clam species that have size limits to be immediately measured and reburied if undersized, and that clams shall be kept in a whole and measurable condition until being prepared for immediate consumption.

**Background and Emergency Rulemaking**

These regulations were developed to respond to concerns about the use of hydraulic pump gear in the recreational clam fishery, particularly when used to harvest gaper clams (*Tresus spp.*) and Washington clams (*Saxidomus spp.*) along the central and northern California coast.

With the tools typically used to harvest clams before the popularization of hydraulic pumps, clams were afforded substantial protection by tidal cycles, which was assumed by existing regulations. Hydraulic pumps allow faster, easier harvest of clams and allow clammers to access submerged beds. This increases the amount of time clams are vulnerable to harvest before and after a low tide, allows harvest on days when tidal levels would have previously prevented harvest, and allows clammers to access subtidal beds. Further, the widespread use of pumps (used by 85% of clammers contacted in a creel survey in 2018), compounded concerns that could impact resource sustainability. Specific concerns include:

- Increased illegal commercialization of gaper clams
- Increased over limits, and high grading

- Increased participation in the fishery after the 2018 closure of abalone concurrent with an overall increase in outdoor recreation during the COVID-19 pandemic.
- Increased impact to eelgrass beds, especially to subtidal beds.

After considering the above, the California Fish and Game Commission (Commission) voted to adopt the emergency regulations in February 2021, and they became effective March 8. The emergency regulations were readopted for 90 days in October 2021, and are slated for a second and final re-adoption in December 2021. This extends the rule to July 7, 2022, when it will expire if a certificate of compliance is not adopted by the Commission.

### **Efficacy of Emergency Rule and Public Response**

Wildlife officers reported the emergency rule is effective at reducing the use of hydraulic pumps, and the requirement to keep individual bag limits separate has improved enforcement and discouraged illegal commercialization.

During creel surveys conducted by Department staff in June and July 2021, 121 groups representing approximately 825 fishery participants were surveyed for information about participation in the clam fishery and their opinion on the emergency regulation prohibiting hydraulic pumps. 45% of groups surveyed reported they went clamming for the first time in 2020 or 2021, or that they clammed on more days in 2020/21 than in previous years. 30% responded that they had previously fished for abalone, and 15% reported that they spend more days per year clamming because abalone is closed. The emergency regulation was supported by 55% of clammers surveyed, compared to 19% who supported allowing hydraulic pumps with the possibility of lower bag limits. The balance did not have an opinion on the issue. 75% of groups reported they were satisfied with current bag limits, with 7% each reporting the limits were too high or too low and 11% having no opinion.

The results of the survey support several of the assumptions made in the emergency rulemaking, particularly that there has been increased interest in the fishery since 2020, including many who have clammed for the first time. They also show that clammers support prohibiting pumps by a nearly 3:1 margin and that clammers are largely satisfied with current bag limits.

### **Impact on Habitat and Clam Stocks**

The impact pumps may have on habitat compared to digging is unclear. Pumps may increase the frequency of disturbance and allow access to previously undisturbed subtidal beds. However, the act of harvesting with pumps may be less destructive because the clam is retrieved through liquified sediment and does not need to be completely dug out. Clams are more often harvested

whole, and impacts to juvenile clams and other benthic organisms may be lessened. The effect of pumps on the sustainability of clam stocks is also uncertain, due partially to the COVID-related limits on field work in 2020 and 2021. A better understanding of these impacts will require further study.

### **Discussion and Recommendation**

With participants using gear other than hydraulic pumps, the fishery has been conducted sustainably for decades under the current management regime. The shift to hydraulic pumps represented a significant change in the nature of the fishery, and the effects of that change on the sustainability of the resource are uncertain. Because of that uncertainty, the use of hydraulic pumps to facilitate illegal take, and the support of fishery participants to prohibit the use of pumps, the California Department of Fish and Wildlife (Department) supports the proposed regulations.