

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 205, 265, 275, 7075, and 7078 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 205, 255, 265, 270, 275, 7050, 7055, and 7056 of said Code, proposes to amend Sections 29.05, 29.20, and 29.80, Title 14, California Code of Regulations, relating to recreational clam, sand crab, and shrimp gear.

Informative Digest/Policy Statement Overview

The Fish and Game Commission (Commission) and the Department of Fish and Wildlife (Department) are proposing to amend Sections 29.05, 29.20 & 29.80 of Title 14, California Code of Regulations (CCR). The proposal is necessary to protect clam stocks from the detrimental effects of hydraulic pumps, especially in the popular clamming areas of Humboldt Bay, Bodega Bay, Tomales Bay, Drakes Estero, and Elkhorn Slough.

The concerns addressed by this action are:

- Increased illegal commercialization of gaper clams facilitated by hydraulic pumps.
- Increased bag-limit overage and high grading of clams
- Use of hand-operated hydraulic pumps in clamming which:
 - speed extraction of clams
 - provide access to previously inaccessible clam beds in deeper water
 - increases time before and after low tide clams are accessible.
- Disturbance of previously undisturbed eel grass habitat during clamming.
- Increased fishing pressure since the closure of the recreational abalone fishery.
- Concern for the sustainability of the resource in state waters, particularly Humboldt Bay, Bodega Bay, Tomales Bay, Drakes Estero, and Elkhorn Slough.

Clams are an important ecological, cultural, and recreational resource in the State of California. The use of hydraulic pumps to harvest clams has greatly increased the efficiency of clam harvesting and allows greater access to clam beds. These factors have likely caused a significant increase in take, and it is unknown whether the stock can support this increase. Further, the use of hydraulic pumps has corresponded with an observed increase in illegal commercial sales of gaper clams. Finally, the increased disturbance of sensitive and ecologically important eelgrass habitat is causing unknown disruption to estuarine environments in the state.

The proposed rule would amend Sections 29.05 and 29.20 to specify the gear permitted to be used to harvest clams as hand operated spades, shovels, hoes, forks, and rakes, and specifically prohibit the use of hydraulic hand pumps. It would also prohibit the possession of hydraulic pumps within 100 yards of where marine invertebrates could be harvested and prohibit the possession of hydraulic pumps concurrently with any crab, and require each person to keep clams they had harvested in a separate container from clams harvested by others. The proposed rule would amend Section 29.80 to specify the gear permitted to be used to harvest sand crabs and shrimp as hand operated spades, shovels, hoes, forks, rakes, and slurp guns and specifically prohibit the use of hydraulic hand pumps.

The proposal also clarifies the authority and reference portions of the three regulatory sections, which do not carry any substantive regulatory effect.

Benefits of the Regulations

The Commission anticipates benefits to the state's environment by sustainably managing California's ocean resources. The environmental risk arising from the proposed rule are not regarded as significant, as the rule manages the resource more conservatively than existing regulation.

Consistency and Compatibility with Existing Regulations

The Department conducted an evaluation of existing regulations and this regulation is neither inconsistent nor incompatible with existing state regulations.

Public Participation

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing to be held on **February 16, 2022 at 8:30 a.m.**, or as soon thereafter as the matter may be heard. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899.

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 Monterey/Santa Cruz area of California, on **April 20, 2022, at 8:30 a.m.**, or as soon thereafter as the matter may be heard. The exact location of this meeting has not yet been determined. As soon as this information is available, but not less than thirty days before the hearing, a continuation notice will be sent to interested and affected parties providing the exact location. The continuation notice will also be published in the California Regulatory Notice Register and published on the Commission's website.

It is requested, but not required, that written comments be submitted on or before **April 7, 2022** at the address given below, or by email to FGC@fgc.ca.gov. **Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on April 15, 2022.** All comments must be received no later than April 20, 2022 at the hearing in the Monterey/Santa Cruz area of California. If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244-2090.

Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller-Henson, Executive Director, Fish and Game Commission, 715 P Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the regulatory process to Melissa Miller-Henson or David Haug at FGC@fgc.ca.gov or at the preceding address or phone number.

Ian Kelmartin, Department of Fish and Wildlife, Ian.Kelmartin@wildlife.ca.gov, has been designated to respond to questions on the substance of the proposed regulations.

Availability of Modified Text

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. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 265 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in sections 11343.4, 11346.4, 11346.8 and 11347.1 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Assessment

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

- (a) **Significant Statewide Adverse Economic Impact Directly Affecting Business, 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 proposal includes relatively minor changes to the fishery: the prohibition of a new gear which has only come into popularity within the past five years, and a requirement to keep bag limits separated. There may be a slight negative impact on shops which sold or rented hydraulic pump gear for clamming.

- (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 anticipates no impacts on the creation or elimination of jobs within the state; no impact on the creation of new businesses or the elimination of existing businesses; no impact on the expansion of businesses in California; generalized benefits to the health and welfare of California residents; no effects on worker safety; and benefits to the state's environment. A sustainable clam fishery supports tackle shops, hotels, campgrounds, and other businesses that cater to fishery participants. This action protects clam stocks and the fishery which support those businesses.

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

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

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

No change in administration or enforcement costs are anticipated by the Department or other state agencies. Consideration was given to keep administrative and enforcement costs within existing budgets. No impact in federal funding to the State is anticipated.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None. The proposed action has been designed to ensure that there are no nondiscretionary cost impacts to local law enforcement or emergency response services.

(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.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Dated: 12/28/2021

Melissa Miller-Henson
Executive Director