

Response to Comment: Comment noted.

- Bill Varney, Surf Angler/Author, February 16, 2022 Commission meeting

2-Three dozen surf anglers have contacted him about the proposed regulations for gear used to collect sand crabs. They are confused about what gear is permitted. He suggests writing the regulations to specify what is not legal instead of what is .

Response to Comment: When regulations specify illegal gear only, stocks are vulnerable to novel or unknown gear types. The use of hydraulic pumps to harvest clams is an example of an unforeseen, novel gear type that posed a risk of overfishing to a stock. The proposed rulemaking is intended to address these vulnerabilities in the clam, sand crab, and shrimp fisheries. Outreach material specifying the legal gear types was circulated after the adoption of the related emergency regulations, and anglers can find the list of legal gear in this year's Ocean Sport Fishing Regulations booklet.

Written comments:

- Marilyn Jasper, Chair, Public Interest Coalition, Email, February 3, 2022

Supports complete and immediate ban on use of any type of hydraulic pump gear for recreational take of clams, sand crab, and shrimp, and for commercial use.

Response to Comment: Comment noted.

- John Cortes, Recreational angler, Email, February 8, 2022

The proposed rulemaking should be modified to allow the use of hand-held nets to take sand crabs. No rationale was given to preclude the use of hand-held nets. No data was provided regarding concern about the overharvest of sand crabs and the existing bag limit of 50 reasonably protects the stock.

Response to Comment: The California Department of Fish and Wildlife (Department) considered this comment and has decided not to modify the proposed regulatory actions for the following reasons:

A. Allowing the use of a new gear type (nets) for the take of sand crabs has not been evaluated and therefore the Department can't support the proposed changes at this time. The reason for restricting the methods of take allowed for sand crabs is because sand crabs and clams can occupy the same habitat. Allowing certain methods of take for one, and not for the other can create situations where gear used for poaching can be brought into the habitat if it is legal to use for the harvest one of the species present. This complicates enforcement and creates opportunities for poaching.

B. Nets were not a legal method of take for sand crabs prior to the related emergency regulation taking effect. Prior to being modified by the emergency rulemaking, Section 29.80(h) allowed for the use of "other appliances operated by hand" to take sand crabs. However, Section 29.80(a)(2) states "Nets, traps or other appliances may not be used except as provided in this Section." This establishes nets to be considered independently of "other appliances" in Section 29.80.

C. The Department's Law Enforcement Division indicated that hand-held nets are used to poach spiny lobster in Southern California. Legalization of these nets would complicate enforcement actions against poaching.

D. Anglers are not unduly burdened by the exclusion of hand-held nets from the legal methods of take because several common methods of take for sand crabs are provided for in the proposed regulations.

Comments received after March 16, 2022 are outlined below:

Rachel Clyde, Environmental Action Committee of West Marin. Oral Comment, California Fish and Game Commission hearing, April 20, 2022. Supports proposed regulation.

- Response: Comment noted.

VII. Location and Index of Rulemaking File

A rulemaking file with attached file index is maintained at

California Fish and Game Commission
715 P Street, 16th Floor
Sacramento, CA 95814

VIII. Location of Department Files

Department of Fish and Wildlife
715 P Street, 17th Floor
Sacramento, CA 95814

IX. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

Allow hydraulic pumps, with the possibility of lower bag limits. This alternative would attempt to protect clam populations by reducing the number of clams each participant is permitted to harvest per day, to compensate for the increased ease and speed of harvest, and increased time available to harvest. This alternative would not address concerns that hydraulic pumps are facilitating the illegal commercialization of gaper clams but could include the requirement to keep separate bag limits, which could ease enforcement of take regulations for clams. Recreational clammers surveyed in summer 2021 preferred hydraulic pumps remained prohibited compared to this alternative.

(b) No Change Alternative

Without any change, the existing emergency rule will expire in 2022. Hydraulic pumps will be allowed again along with risk to the clam stock and illegal commercialization.

(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.

- (d) Description of Reasonable Alternatives that Would Lessen Adverse Impact on Small Business
None.

X. 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 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; 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

Updated 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 emergency 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.
 - increase 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.

Update:

On April 20, 2022, the Commission adopted the proposed regulations as set forth in the Initial Statement of March 23, 2022.

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