

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

Amend Section 29.80
Title 14, California Code of Regulations
Re: Gear Restrictions

I. Date of Initial Statement of Reasons: May 6, 2010

II. Dates and Locations of Scheduled Hearings:

- (a) Notice Hearing: Date: May 5, 2010
 Location: Stockton
- (b) Discussion Hearing: Date: June 24, 2010
 Location: Folsom
- (c) Adoption Hearing: Date: August 5, 2010
 Location: Santa Barbara

III. Description of Regulatory Action:

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

Under current regulation (Section 29.80(b) of Title 14, CCR) spiny lobster and crabs may be taken by baited hoop nets. Not more than five baited hoop nets may be used by a person, not to exceed a total of 10 baited hoop nets from any vessel. The term "baited" poses a problem for enforcement. In order to have a violation of this section dealing with hoop nets, a warden first has to prove that the hoop net was baited. Once a crustacean or fish eats the bait underwater there is no way to tell that a hoop net was ever baited. The department proposes removing the word "baited" so that anyone who has more than five hoop nets in their possession while fishing; or more than 10 hoop nets on a vessel are in violation of the law without determining whether they were baited.

There is currently no definition of a hoop net. For many years a hoop net consisted of two hoops connected by net meshing. The top hoop was larger than the bottom hoop. When the hoop net sat on the bottom of the ocean it laid flat. When lobster fed on bait attached to the hoop net they were free to come and go with nothing keeping them in the hoop net. When it was raised to the surface the net meshing stretched out between

the hoops and it caught anything that was feeding in the hoop net at the time it was raised.

Within the last few years, there have been several types of hoop nets developed. These newly created hoop nets are becoming increasingly efficient and are beginning to have the design and fishing capabilities of a trap. Traps are illegal to use when taking lobsters. These definitions will assist wardens and the public in determining if a device used to take lobsters is considered a trap or a hoop net.

These newly designed hoop nets consist of an upper and lower metal hoop. The bottom hoop is approximately 36 inches in diameter. The upper hoop is about 12-24 inches in diameter. The two hoops are connected by 3-4 rigid pieces of metal approximately 6-12 inches in length, so that the upper hoop sits about 6-12 inches above the lower hoop. Between the two hoops is meshing. When the hoop net sits on the ocean floor, the top hoop is supported by the rigid arms which allow the top hoop to sit above the lower hoop with mesh netting raised in between the two hoops. A lobster will climb up the outside of the mesh netting and enter the top of the hoop net. It then climbs into the hoop net to get to the bait. Depending on the height of the upper hoop, the lobster may or may not be able to exit the hoop net. When the lobster needs to make a quick escape, such as when the hoop net is moved, the lobster swims backwards into the mesh netting and cannot escape. It is also questionable whether a small lobster, once inside the hoop net, can crawl out of the net. This could be an issue if the hoop net was lost and the small lobster could not be released back into the open ocean waters. Lobsters may only be taken by hand or hoop net.

Wardens in the field are also commenting on the popularity and efficiency of the newly designed hoop nets. The wardens are finding the success of those using the new hoop nets much greater than those using the old style hoop net that lays flat on the ocean floor until lifted. The field wardens feel some of these "hoop nets" act like traps, however, there is no definition of the construction of a legal hoop net. A definition of a hoop net is necessary to make this method of take for lobster enforceable. It is also needed to prevent further modification of the hoop net before it becomes a trap with no escape for the lobster. This is important since there are no regulations in the sport regulations that provide for escape ports or mechanisms on hoop nets.

The department is providing two operative definitions of a legal hoop net, in order to accommodate the gear configurations that are currently in use by the public. The definitions will include the traditional style hoop net that lies flat on the ocean floor as well as the new style hoop net that has the

second smaller ring that is held above the ocean floor.

In order to determine how many hoop nets a person is using a warden needs to see that person lift the gear. Hoop nets are not typically weighted, and in rough surf a typical hoop net will move around the ocean floor. If a hoop net is lost, there is a chance for the gear to end up in the navigation channel which is a concern for boaters. By requiring that hoop nets be pulled at intervals of no more than two hours, this limits the number of nets that will be lost as well as enhances enforcement's efforts to determine who the hoop nets belong to.

If adopted by the Commission, it is recommended that this regulation go into effect April 1, 2011. It is anticipated that the regulation would be approved by the Office of Administrative Law sometime around the beginning of October 2010. The effective date of the regulation would not be until April 1, 2011. By having the April 1, 2011 effective date, there will be an opportunity for department staff to inform the public of the change in the regulation and provide a timely transition for those needing to comply with the new regulation in the season starting October, 2011. It will also give the hoop net manufacturers a timetable to work with so they do not develop any more hoop nets that will not meet the newly created definition of a hoop net.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 202, 205, 215 and 220 Fish and Game Code.
Reference: Section 202, 205, 206, 215 and 220 Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None

- (d) Identification of Reports or Documents Supporting Regulation Change:

Book by Jimmie Salazar called *Hoopin' It Up: A Guide to Lobster and Crab Hoop Netting*. The book explains the use of both types of hoop nets and illustrates what the nets look like and how they are fished.

- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

Two public meetings were conducted by the Law Enforcement Division in San Diego and Newport Beach in September 2009, to gather public input on hoop net design and appropriate regulations.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Allow lobsters to be taken with traps. This alternative would increase the take of lobsters and have the possibility of affecting the lobster population. It would also increase the efficiency of harvesting lobster which would likely increase the illegal take of sport lobster and their commercialization.

(b) No Change Alternative:

The no change alternative would allow the current confusion to continue with no clear guidance as to what is or is not a legal hoop net.

(c) Consideration of Alternatives:

In view of the information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, or would be as effective as and less burdensome to affected private persons than the proposed regulation

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. 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 initial 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 action allows for a better definition of gear restrictions and enforcement, and is economically neutral to business.

(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:

None

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

The proposed action may have a minor economic impact on those who currently sell or possess the new style hoop net which has the ring that is held above the ocean floor when deployed. However, the measurements used to develop the wording for the size of the hoop nets was developed using existing style hoop net measurements.

(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:

None

(h) Effect on Housing Costs:

None

Informative Digest/Policy Statement Overview

Under current regulation (Section 29.80(b), Title 14, CCR) spiny lobster and crab may be taken by “baited” hoop nets. Not more than five baited hoop nets may be used by a person, not to exceed a total of 10 baited hoop nets from any vessel. The department proposes removing the word “baited” so that anyone who has more than five hoop nets in their possession while fishing; or more than 10 hoop nets on a vessel are in violation of the law without determining whether they were baited.

The department is also proposing two definitions of a hoop net as indicated in subsection 29.80(b)(1). The definitions encompass the traditional style hoop net that lies flat on the ocean floor as well as the new style hoop net that has the second smaller ring supported above the ocean floor.

It is recommended that these regulation changes become effective April 1, 2011. This will allow the department to inform the public of the change in the regulation and provide a timely transition for those needing to comply with the new regulation.

Traps are illegal to use when taking lobsters. These new hoop net definitions will assist wardens and the public in determining if a device used to take lobsters is considered a trap or a hoop net.