

TITLE 14. Fish and Game Commission

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the California Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 205, 713, 1050, 2365, 7075, 7078, 8254, 8259 and 9005 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205, 255, 265, 270, 275, 713, 1050, 2365, 7050, 7055, 7056, 7071, 7075, 7078, 7852.2, 8026, 8043, 8046, 8250, 8250.5, 8251, 8254, 9002, 9005, 9006 and 9010 of said Code, proposes to amend sections 29.80, 29.90, 29.91, 121, 121.5, 122, 122.1, 122.2, and 705, Title 14, California Code of Regulations, relating to commercial and recreational take of California spiny lobster and recreational hoop net requirements for take of crustaceans.

Informative Digest/Policy Statement Overview

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR).

The recreational and commercial spiny lobster fisheries are managed under the authority of the 2016 California Spiny Lobster Fishery Management Plan (FMP) adopted by the Commission on April 13, 2016 and implementing regulations adopted the same year which went into effect April 1, 2017.

Existing implementing regulations for recreational take of spiny lobster, and regulations regarding the use of hoop nets for the recreational take of saltwater crustaceans specify:

- Authorized methods of take (spiny lobster by hoop nets or by hand only; crab by hoop nets, crab traps and crab loop traps north of Pt. Arguello, or by hand).
- Hoop net limits (five per person south of Pt. Arguello, ten per vessel south of Pt. Arguello, and two per person from a public pier statewide), maximum hoop net service interval of two hours, and the two prescribed types of hoop nets allowed in California.
- A requirement to mark hoop nets that are deployed from a vessel with a buoy, and a requirement to mark hoop net buoys with identification of the owner or operator of the hoop net.
- Open season, daily bag and possession limit, minimum size limit, and report card requirements for California spiny lobster.

Existing, implementing regulations for the commercial spiny lobster fishery specify the open season, minimum size, limited entry permit requirements, restricted fishing areas, fishing log requirements, authorized methods of take, prescribed configuration of traps and buoys, trap limit, trap tag requirement, a requirement to report lost traps, maximum trap service interval of 168 hours, a prohibition of abandoning traps, and a prohibition against tampering with another person's trap except to retrieve derelict traps.

The proposed changes focus on fine-tuning existing regulations controlling the recreational and commercial spiny lobster fisheries. The amendments proposed here represent the cumulation of the California Department of Fish and Wildlife's (Department) internal dialogue as well as the various outreach efforts to the recreational and commercial user groups. The framework established in the FMP is still sound and no FMP amendment is being proposed. The proposed changes are necessary to help improve the current regulations.

In addition to these adjustments, this proposal would also amend existing regulations on the recreational use of hoop nets beyond the scope of spiny lobster fishing in southern California. These additional changes to hoop net regulations are part of the ongoing effort by the Department to

mitigate marine life entanglements in California. In 2021, new restrictions went into effect for recreational trap use in the recreational crab fishery due to ongoing concerns over potential marine life entanglements. Department staff have since noted the increased use of hoop nets as well as development of hoop nets that behave more like traps. These developments prompted the Department to propose broader regulatory changes on hoop net use in this package. These changes were first implemented through an emergency rulemaking by the Commission on October 13, 2022. Those changes would be adopted here through the standard rulemaking process.

The proposed changes are as follows:

Recreational Changes

- 29.80(b)(1) Refine the specifications for the allowed types A and B hoop nets in line with the emergency regulation: For both types A and B hoop nets, require that the soft mesh be non-metallic. For Type B hoop nets, restrict the number of rings to two, require that rigid support arms be straight, and prohibit additional openings.
- 29.80(b)(1) For Type B hoop nets, specify that if a bait ring is used, it must be attached to the bottom half of the net and may not be attached to any part of the rigid frame.
- 29.80(b)(2) and (3) Reorganize the requirement that the owner or operator of a hoop net shall raise the hoop net to the surface and inspect the contents of the hoop net at intervals not to exceed two hours and clarify that the required service interval applies statewide.
- 29.80(b)(4) Specify the number of hoop nets that may be deployed in different parts of the state.
- 29.80(b)(5) Clarify hoop net buoy marking requirements and establish marking requirement for hoop nets deployed by a vessel in California waters.
- 29.80(b)(6) Prohibit the use of hoop nets for any purposes south of Point Arguello for the 24-hour period prior to the recreational spiny lobster season opening.
- 29.90(a) Change the start of the recreational season for spiny lobster from 6:00 am of the Saturday preceding the first Wednesday in October to 6:00 pm of the Friday preceding that first Wednesday.
- 29.90(c) Clarify that when a spiny lobster is first taken it must be measured immediately and that any undersize lobster must be released with none kept in possession.
- 29.91(b) Clarify that the month, day, location, and gear code must be entered on the first line of a Spiny Lobster Report Card prior to a hoop net being deployed or diver entering the water.

Commercial Changes

- 121.5(b) Clarify that lobsters must be measured immediately when any trap is raised to the surface.
- 122(a)(2) Change the boundary of where commercial fishing may occur on the southern Catalina Island coast to the more identifiable landmark Church Rock.
- 122.1(b) Require lobster receiver buoys to be marked with the identification of their owners.
- 122.1(c) and 705(c)(5) Move the incorporation by reference of Form DFW 1701 (Lobster Operator Permit Catastrophic Lost Trap Tag Affidavit) from Section 705 to Section 122.1.

122.2(f) and 705(c)(7) Extend the deadline of the End of Season Spiny Lobster Trap Loss Reporting Affidavit (DFW 1020) from April 15 to April 30. Move the incorporation by reference of form DFW 1020 from Section 705 to Section 122.2.

122.2(h) Add “disturb” to the prohibited actions for a lobster trap or receiver not one’s own. Specify that every commercial permit holder retrieving another individual’s trap to first obtain the trap owner’s written permission; the permit holder could then retrieve up to six lost or derelict traps per trip during the fishing season.

Form DFW 1020 (Rev. 10/10/22) Reformat the trap loss affidavit. Insert a Privacy Notice in accordance with Civil Code subdivision 1798.17(b).

Non-substantive editing and renumbering to improve the clarity and consistency of the regulatory language have been made in sections 29.80, 29.90, 29.91, 121, 121.5, 122, 122.1, and 122.2.

Benefit of the Regulations:

The proposal improves enforceability of the regulations governing spiny lobster fishing, the commercial business’ operations, and the user experience for various stakeholders. In addition, the broader changes to recreational hoop net usage, specifically those applicable to northern California recreational crab fishery, would help mitigate ongoing entanglement risk of endangered marine life.

Consistency and Compatibility with Existing Regulations:

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Section 20, Article IV, of the state Constitution specifies that the Legislature may delegate to the 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 adopt regulations governing lobster fishing and fishing generally (California Fish and Game Code sections 200, 205, 7075, 7078, and 8254). No other state agency has the authority to adopt regulations governing commercial and recreational take of spiny lobster and use of hoop nets for recreational fishing. The Commission has reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the CCR for any regulations regarding the adoption of fishing regulations and has concluded that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Public Participation

Comments Submitted by Mail or Email

It is requested, but not required, that written comments be submitted on or before April 6, 2023 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 14, 2023. 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.

Meetings

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Natural Resources Headquarters Building Auditorium, 715 P Street, Sacramento, California, which will commence at 8:30 a.m. on Wednesday, February 8, 2023, and may continue at 8:30 a.m., on Thursday, February 9, 2023. This meeting will also include

the opportunity to participate via webinar/teleconference. 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. Please refer to Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing which will commence at 8:30 a.m. on Wednesday, April 19, 2023, and may continue at 8:30 a.m., on Thursday, April 20, 2023. 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. Please refer to Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikethrough 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 Sherrie Fonbuena at FGC@fgc.ca.gov or at the preceding address or phone number.

Dr. Jenny Hofmeister, Environmental Scientist, Department of Fish and Wildlife, (lobster@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. 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 proposed amendments to current regulations are not anticipated to introduce additional costs for commercial or recreational fishers. The volume of recreational and commercial activity in the fishery is not expected to change as a result of the proposed amendments. The proposed refinements of spiny lobster and recreational hoop net regulations

clarify details of the existing regulations including zone boundaries and simplify marking requirements that should save time while also achieving management ends.

For the most recent season of 2021-2022, the Department has data on 238 businesses that could possibly be affected: 132 active commercial lobster operators; 39 commercial passenger fishing vessels (CPFV) that offer lobster trips; and 67 CPFVs that offer Dungeness crab trips. Only the CPFV operators would be affected by the recreational hoop net changes, and not many, if any, CPFVs have been deploying the new hoop net gear for the take of spiny lobster or crab. Commercial lobster fisheries do not use recreational hoop nets so will not be affected by this change.

The demarcation of the boundary of where commercial fishing may occur on the southern Santa Catalina Island coast to a more identifiable landmark (Section 122) is not anticipated to impact fuel or other costs. The boundary is proposed to be moved by about 150 feet to a more readily identified landmark. This amendment will expand the fishable areas that lobster vessel operators may choose to fish though some may choose to stay within the previously defined boundary

- (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 impacts on the creation or elimination of jobs within the state, the creation of new business, the elimination of existing businesses, or the expansion of businesses in California because the proposed regulations are unlikely to change the demand for goods or services related to the commercial and recreational spiny lobster fisheries and recreational crab fishery. The Commission does not anticipate direct benefits to the general health and welfare of California residents; however, the proposal would benefit California residents generally by benefitting the state's environment.

Benefits to worker safety are anticipated, with the reduction in the risks incurred by the Department's Law Enforcement Division (LED) during dark hour openers and long shifts. Benefits to the state's environment are anticipated including preservation of the lobster fishery resource through regulatory oversight, and a reduction in the number of marine life entanglements in fishing gear.

- (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. The proposed regulatory action is not anticipated to introduce new monetary costs that would be necessarily incurred in reasonable compliance with the proposed amendments to the current regulations. Under current regulations, commercial lobster receivers are required to be marked with a buoy, but no buoy marking requirements are specified. In response to fishery feedback, marking requirements for buoys for commercial lobster receivers were specified to be the same as those in use for commercial traps. The proposed marking requirements for hoop nets north of Point Arguello will not have cost impacts because hoop nets deployed from a vessel would already have buoys attached with identifying marks. The proposed regulation will require that the buoy be marked with the GOID, which can be done with a permanent marker or other low-cost methods.

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

The Commission estimates that program implementation will involve some increase or shift in work effort for staff within the Department's LED totaling approximately \$18,618 annually that is absorbable within currently existing budgets.

(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.

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.

FISH AND GAME COMMISSION

Melissa Miller-Henson
Executive Director

Dated: January 10, 2023