

State of California  
Fish and Game Commission  
Initial Statement of Reasons for Regulatory Action

Amend Sections 29.80, 29.90, 29.91, 121, 121.5, 122, 122.1, 122.2, and 705  
Title 14, California Code of Regulations  
Re: Commercial and Recreational Take of California Spiny Lobster; Recreational Hoop Net  
Requirements for Take of Crustaceans

I. Date of Initial Statement of Reasons: December 27, 2022

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing:

Date: December 14-15, 2022

Location: San Diego

(b) Discussion Hearing:

Date: February 8-9, 2023

Location: Sacramento

(c) Adoption Hearing:

Date: April 19-20, 2023

Location: Fresno/Bakersfield area

III. Description of Regulatory Action

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

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR) and all references to “lobster” or “spiny lobster” are to the species *Panulirus interruptus*, commonly known as the California Spiny Lobster.

The proposed changes focus on fine-tuning the existing regulations controlling the recreational and commercial lobster fisheries. The last time these regulations were subject to major amendment was 2017, when the California Fish and Game Commission (Commission) adopted regulatory changes to implement the 2016 California Spiny Lobster Fishery Management Plan (FMP; [Department 2016](#)). The proposed amendments here represent the cumulation of the California Department of Fish and Wildlife’s (Department) internal discussion as well as input from recreational and commercial user groups. The proposed changes are necessary to improve the recreational and commercial lobster fishing regulations that were implemented in 2017 along with the FMP.

The proposed changes also amend the regulations controlling the use of recreational hoop nets. The gear type is commonly used for recreational lobster fishing. However, the changes proposed here would extend to recreational crab fishing as well due to ongoing concerns over entanglement of protected marine life.

Background

The Commission adopted the FMP at its April 2016 meeting. The document established a comprehensive management framework for the recreational and commercial California spiny lobster fisheries, most notably the incorporation of a Harvest Control Rule (HCR).

Under the HCR, the Commission selects management responses from a set of vetted management tools whenever specific reference points (which are based on catch, catch-per-unit-effort, and spawning potential ratio of the stock) are triggered.

In addition to the FMP and HCR, the following regulation changes were adopted by the Commission in 2016: new recreational hoop net marking requirements, new restrictions and clarifications on recreational take methods, a new start time for the recreational fishing season, a commercial trap limit program, and new provisions to allow retrieval of lost or abandoned commercial traps in-season, among others. These regulatory amendments were adopted in sections 29.80, 29.90, 121, 121.5, 122, and 705; and two new sections were added: 122.1 and 122.2. The changes and additions became effective in 2017 (Office of Administrative Law (OAL) File 2017-0118-03SR).

As the regulatory changes were being finalized in 2016, the Department and various stakeholders agreed to revisit the regulations for adjustment in the future. Internal dialogues between Department staff have been ongoing ever since, especially those pertaining to the enforceability of the regulations adopted in 2016. At the same time, stakeholders also reached out to Department staff and the Commission with requests to adjust the regulations (e.g., [Commission 2019](#); [Commission 2022](#)). In response to these requests, Department staff conducted various outreach efforts to different stakeholder groups to solicit further input. These included a survey to the commercial sector on February 9, 2022 (See [Department 2022](#)) and a virtual meeting with the recreational community on May 26, 2022.

In addition to fine-tuning the regulations governing spiny lobster fisheries, this proposal also contains changes to recreational hoop net regulations that apply statewide. The proposed hoop net changes address management needs due to increased use of hoop nets in the recreational Dungeness crab fishery, a popular recreational fishery that primarily occurs between San Luis Obispo and Del Norte counties.

A hoop net is a type of light-weight net that resembles a lantern made of mesh. The inside of the gear is baited to attract animals, and the net can then be pulled up with the animals inside (Figure 1).

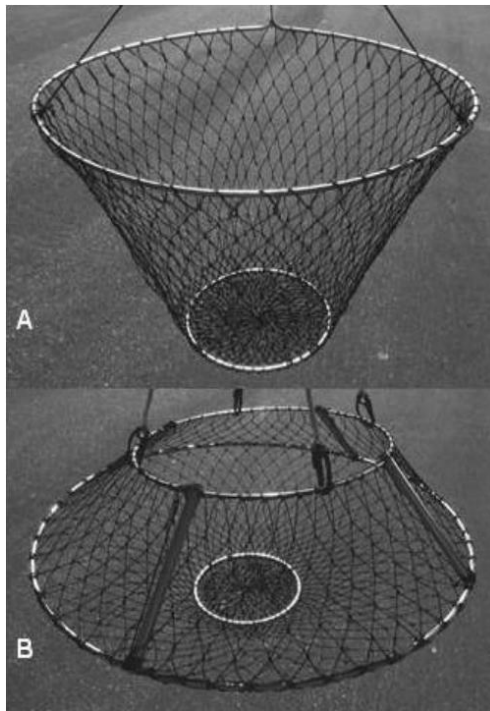


Figure 1: Current Type A Hoop Net (A) and Type B Hoop Net (B).

Since 2013, a significantly higher number of marine life entanglements in fishing gear have been observed off California. Many of these entanglements involved endangered marine life, such as blue whales and humpback whales ([Saez et al. 2021](#)). Both the state and the fishing community have been attempting to reduce and eliminate such entanglements over the past several years (see e.g., [Department 2020](#); see also e.g., [Working Group 2021](#)). In 2021, the Commission further imposed new requirements on the use of recreational traps by the recreational Dungeness crab fishery in northern California to help account for that fishery's potential contribution to entanglement risk ([Commission 2020](#)). In particular, the use of recreational traps may now be prohibited temporarily by the Director of the Department (Director) during periods of elevated entanglement risk (subsection 29.80 (c)(7)).

At the start of the 2021-2022 Dungeness crab recreational fishing season (the first Saturday of November), a prohibition on the use of crab traps was declared by the Director in response to increased marine life entanglement risk at the time. The prohibition lasted for 5 weeks in Fishing Zone 4 (Pigeon Point to Lopez Point) and 6 weeks in Fishing Zone 3 (Sonoma/Mendocino county line to Pigeon Point), and a dramatic increase in hoop net use was observed between Monterey and Sonoma counties. Another crab trap prohibition was subsequently declared in April 2022 north of Point Arguello, Santa Barbara County, to the California-Oregon border, which lasted for the remainder of the 2021-2022 season (10 weeks in the central region of the state and 14 weeks in the northern region of the state). Again, staff reported an increased use of hoop nets.

On top of the increasing use of hoop nets, the Department has been made aware that gear manufacturers are developing new hoop net designs that follow current hoop net Type B regulations but resemble traps. It is important to note that hoop nets are not meant to retain catch the way traps do and animals can freely move in and out of the gear without much

impediment. As such, this gear type must be actively tended. Hoop nets constructed to behave like traps may incentivize longer soak periods posing elevated entanglement risk. Additionally, the use of traps to recreationally fish for crustaceans south of Point Arguello is not permitted, and hoop nets that more closely function as traps would reduce the integrity of that prohibition and violate the intent of that regulation. Furthermore, since hoop nets used north of Point Arguello, Santa Barbara County, are not required to be marked with identification, entanglements involving this gear type are more difficult to identify and address.

Due to the elevated marine life entanglement risk posed by the dramatic increase in hoop net gear use coupled with the impending use of the new hoop net type, an emergency rule was adopted by the Commission at its October 2022 meeting in order to have the regulation in place prior to the beginning of the 2022-2023 recreational Dungeness crab season. This proposal incorporates the changes made by the emergency rule.

## CURRENT REGULATIONS

Current laws governing the recreational spiny lobster fishery and use of hoop nets for the recreational take of saltwater crustaceans are as follows:

Section 7256, California Fish and Game Code (FGC), Spiny lobster may only be taken with a hoop net or by hand.

29.80(b) A limit of five hoop nets per person south of Point Arguello, Santa Barbara County.

29.80(b) A limit of ten hoop nets per vessel south of Point Arguello, Santa Barbara County.

29.80(b) Maximum hoop net service interval of two hours.

29.80(b) Two prescribed types of hoop nets that are allowed in California.

29.80(b) South of Point Arguello, Santa Barbara County, recreational hoop net operators (those people who deploy hoop nets) are required to mark the buoys of their hoop nets with their Get Outdoors identification numbers (GO ID), while commercial passenger fishing vessels (CPFVs) must mark their hoop net buoys with the vessel's commercial boat registration number, and licensed fishing guides must mark buoys with their guide license number for hoop nets used on a guided tour.

29.80(g) Diving for lobster is allowed, provided that the diver does not possess any hooked device.

29.90(a) Open season from 6:00 am on the Saturday preceding the first Wednesday in October through the first Wednesday after the 15th of March.

29.90(b) Daily bag and possession limit of seven lobsters.

29.90(c) Minimum carapace length of 3 and ¼ inches; recreational hoop net users may take lobsters out of the water to measure them, provided that no undersized

lobster is retained for possession. Recreational divers, however, must measure lobsters while they are still in the water.

29.90(d) and 29.91 Requirement to purchase, fill out, and return Spiny Lobster Report Card.

29.90(e) Spiny lobsters shall be kept in a whole, measurable condition, until being prepared for immediate consumption.

Current regulations governing the commercial spiny lobster fishery are as follows:

121(a) Open season between the first Wednesday in October and the first Wednesday after the 15th of March.

121(b) Prohibition against possessing any spiny lobster following closed season.

121.5 Minimum carapace length of 3 and  $\frac{1}{4}$  inches; lobster must be measured immediately on removal from the trap and undersized lobster must be returned to the water immediately after measuring.

122(a) through (c) Limited entry permit requirements.

122(d) Restricted fishing areas.

122(e) through (f) Fishing log requirement.

122(g) All commercial operators operating from a vessel are jointly liable for any violation incurred from that vessel.

122(h) Prohibition against taking lobsters using SCUBA gear.

122.1(a) Prescribed configuration for traps and buoys.

122.1(c) and 122.2(f) Trap limit, the accompanying trap tag requirement, and End of Season Spiny Lobster Trap Loss Reporting Affidavit (Affidavit).

122.2(a) Prohibition against fishing at night.

122.2(b) through (c), Grace period for setting and baiting traps before season, and retrieving the traps post season.

122.2(d) Maximum trap service interval of 168 hours.

122.2(e) Prohibition against abandoning traps.

122.2(h) Prohibition against tampering with another person's trap, except to retrieve up to six derelict traps during a fishing season, under a waiver granted the Department, or an unlimited number of traps post-season.

180.5(b) All buoys attached to a lobster trap must be marked with the operator's commercial fishing license identification number followed by the letter "P."

## EMERGENCY REGULATIONS ADOPTED

The Commission adopted emergency regulations on October 13, 2022 which became effective on October 31, 2022 (OAL file No. 2022-1021-02E). The emergency regulations prohibit the use of the newly developed hoop net type and require all hoop nets north of Point Arguello to be marked with the identification of at least one operator. The emergency regulations will remain in effect for 180 days (and possibly two additional 90-day periods) during consideration of this standard rulemaking, which serves as the certificate of compliance for amendments to Section 29.80.

The emergency regulations placed the following changes to recreational hoop net use:

29.80(b)(2) Clarify that the two-hour hoop net service interval requirement applies statewide.

29.80(b)(4)(A) and (B) Require the soft mesh on hoop nets to be non-metallic for Type A and Type B hoop nets.

29.80(b)(4)(B) Amend requirements of Type B hoop nets by restricting the number of rings from three to two, adding that the rigid support arms be “straight” and prohibiting the use of any additional openings.

29.80(b)(6) Add that the use of a surface buoy and necessary gear marking requirements apply statewide, to include hoop nets used north of Point Arguello, and that only one operator’s GO ID is necessary.

## PROPOSED REGULATIONS

The proposed changes to the regulations governing spiny lobster fisheries would not alter the fundamental fishery assessment framework (i.e., the HCR) or effort- and gear-based restrictions established in the FMP. Instead, the changes here would only address concerns brought by stakeholders and Department staff regarding the current fishing regulations. Several of the changes proposed here would reduce the regulatory burden on fishery participants, while others would improve enforceability of current regulations.

### **Section 29.80. Gear Restrictions for Recreational Take of Saltwater Crustaceans.**

There are no proposed changes to subsection 29.80(a).

Amend subsection 29.80(b), Hoop Nets.

The main body of subsection 29.80(b) other than “Hoop nets may be used to take spiny lobsters and all species of crabs” is deleted. The deleted parts of the paragraph that prescribe the possession limit on hoop nets and the minimum service interval for hoop nets are moved to subsections 29.80(b)(2) through (4). This is necessary to improve clarity and readability of the regulation.

Amend subsection 29.80(b)(1), Hoop Net Defined.

For clarity, the phrase “There are two types of hoop nets allowed for use” will be replaced with “Only Type A and Type B hoop nets, as described below, are allowed for use.” Clarifying the original language definitively limits the two types, A and B, of

hoop nets as described. This is further reinforced by subsection 29.80(a)(2) that states “Nets, traps or other appliances may not be used except as provided in this Section.”

Amend subsection 29.80(b)(1)(A), Type A.

For clarity and readability, the elements of the original text describing the permitted design of the Type A hoop net have been separated (renumbered) into their own provisions as subsections 1. through 6. For every reference of “soft mesh” the word “non-metallic” is added to specify the material. Ensuring non-metallic mesh is necessary to minimize entanglements, as metallic mesh is more conducive to longer soak time and the extra weight could exacerbate the seriousness of potential entanglements. In the case of Type A hoop nets, which are intended to be collapsible, a metallic mesh structure could impede this design.

- (b)(1)(A)1. – The description of the lift lines attached only to the top ring remains the same.
- (b)(1)(A)2. – The relative size of the rings remains the same. The mesh surrounding the gear must be non-metallic.
- (b)(1)(A)3. – A comma is added follow the phrase “When the net is being raised”; “non-metallic” is added to specify that the bottom portion of the soft mesh must also be non-metallic soft mesh; language specifying the relative positions of the rings remains the same.
- (b)(1)(A)4. – The provision requiring that the hoop net lie flat on the ocean floor remains the same.
- (b)(1)(A)5. – The provision specifying the maximum height of a hoop net when it is suspended remains the same.
- (b)(1)(A)6. The maximum thickness of the ring material remains the same.

Amend subsection 29.80(b)(1)(B), Type B.

For clarity and readability, the elements of the original text describing the permitted design of the Type B hoop net have been separated (renumbered) into their own provisions as subsections 1. through 7. The Type B hoop net will now be composed of only two rigid rings (plus a bait ring if desired), with no changes to the minimum and maximum ring diameters. As with Type A hoop nets, for every reference of “soft mesh” the word “non-metallic” is added to specify the material. Ensuring non-metallic mesh is necessary to minimize entanglements, as metallic mesh is more conducive to longer soak time and the extra weight could exacerbate the seriousness of potential entanglements.

- (b)(1)(B)1. – Amendment of “upper ring or rings” to “top ring” is made to reflect that Type B hoop nets can now only incorporate two rings; and a provision is added that the rigid arms connecting the top and bottom rings must be straight. The 10-inch height restriction for the assembled frame remains the same.

- (b)(1)(B)2. – The maximum thickness of the rings and support materials remains the same.
- (b)(1)(B)3. – Like the Type A hoop net, the mesh surrounding the gear must be non-metallic.
- (b)(1)(B)4. – The provision that lift lines shall only be attached to the top ring remains the same.
- (b)(1)(B)5. – The provision specifying the maximum height of a hoop net when it is suspended remains the same; however, minor edits reflect that the Type B hoop net can now only incorporate two rings. A comma is added for grammatical correctness.
- (b)(1)(B)6. – A provision is added, specifying that for a Type B hoop net, no entrance is allowed below the top ring, which is the only permitted entrance.
- (b)(1)(B)7. – A modification for clarity of the original provision specifies that the bait ring, if used, must be attached to the bottom half of the net.

Referring to Figure 1 above and Figure 2 below, the proposal to amend the specifications of the Type B hoop net is necessary to help mitigate entanglement risk. As explained above, the Commission recently adopted additional restrictions on the use of recreational crab traps over concerns of their entanglement potential towards endangered marine life ([Commission 2020](#)). Department staff is concerned that hoop net users would design a hoop net with multiple opening(s), larger volume, curved shape and thicker construction (Figure 2). This could lead users to deploy them as traps and not actively tend to them. This is in sharp contrast with the conventional hoop nets, which are designed to be actively tended (Figure 1). The specifications for the two types of hoop net under subsection 29.80 (b)(1) were adopted in 2010 specifically to help ensure that hoop nets did not evolve to become traps ([Commission 2010](#)). Additionally, the use of traps to recreationally fish for crustaceans south of Point Arguello is not permitted, and hoop nets that become more trap-like would violate this prohibition.

Due to the potential impact that the trap-like hoop nets may create, there are substantial concerns within the Department of allowing their deployment without thorough vetting. As such, the regulation would restrict the use of such gear for now. The proposed regulation that Type B hoop nets must be supported by straight arms and only two rings is necessary to prevent high-volume nets with constricted openings that behave like traps. The proposed regulations that bait rings used in Type B hoop nets must be positioned near the bottom and that the sole opening must be at the top is necessary to prevent nets from becoming trap-like apparatuses that funnel the catch in and prevent them from escaping.



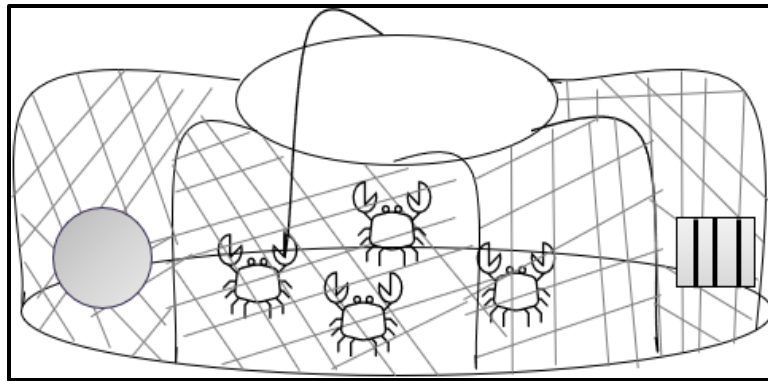


Figure 2: Rendition of recently developed hoop net that could function more similarly to a trap.

Subsections 29.80(b)(2) and (3).

The current subsections are proposed to be reorganized and amended in the added subsections 29.80(b)(3) through (5).

Add subsections 29.80(b)(2) through (6) clarifying the operational requirements of deploying hoop nets.

- (b)(2) The current maximum inspection interval of two hours, currently specified in the last sentence of subsection 29.80(b), is moved to its own subsection and amended. Moving the maximum service interval into its own subsection and disconnected from the hoop net limits would make clear that the interval applies state-wide, as opposed to only south of Point Arguello. “The owner of the hoop net or person who placed the hoop net in the water” is replaced with “The owner or operator of a hoop net.” Using the term “operator” in placed of “person who placed the hoop net in into the water” is necessary to improve readability and enforceability; the new term necessarily covers whoever deploys a net, and provides for consistency with the marking requirement for hoop nets deployed from private vessels which is tied to their operators.
- (b)(3) The current subsection 29.80(b)(2) is renumbered as 29.80(b)(3). In addition, the language is amended to make clear that it is unlawful to abandon a hoop net or leave it unchecked for more than two hours. This is for the purpose of ensuring that hoop net owners/operators understand that they must actively tend to their hoop nets as opposed to soaking them unattended.
- (b)(4) Limits. The existing limits on the number of hoop nets that may be possessed (subsection 29.80(b)) are moved to this subsection and amended to improve clarity of the existing limits. The amendment describes the limits on the number of hoop nets that may be deployed at any one time. The language also clarifies that use of hoop nets from public piers is restricted to two nets under subsection 28.65(b).

- (A) Current regulations limiting the number of hoop nets that may be possessed south of Point Arguello are expanded to limit possession and deployment of hoop nets. South of Point Arguello, an individual may possess and deploy up to five hoop nets total when fishing alone. When two or more individuals are taking crab or lobster onboard a vessel, up to a total of ten hoop nets may be possessed aboard or deployed from the vessel. Expanding the requirements to include both possession and deployment is necessary for ease of enforcement. Since the marking requirement of a hoop net is tied to its operator, the limit is expanded to include people who deploy the hoop nets, namely the operators, to close the nexus of accountability. Possession is retained in the regulatory language in case individuals try to claim that additional hoop nets aboard a vessel are not being “deployed” within the meaning of the regulation, which would complicate enforcement and contravene the purpose of setting the limits.

The revised provision of the ten-net vessel limit is necessary to eliminate confusion over the hoop net limits. The state’s position on hoop net limits has always been that the vessel limit applies in addition to the individual limit. This means that when there is only one person aboard a vessel, that individual is restricted to using only five hoop nets pursuant to the individual limit. However, the current language might lead some individuals to believe that a single individual on a vessel may possess and use up to ten nets.

- (B) The new subsection 29.80(b)(4)(B) clarifies that there is no limit on the number of hoop nets that may be possessed or deployed north of Point Arguello. This is to help avoid confusion over whether any hoop net limit applies north of Point Arguello.

(b)(5) Hoop Net Identification Requirements:

The current hoop net marking requirement in subsection 29.80(b)(3) is renumbered as subsection 29.80(b)(5) and revised. The revision is necessary to help clarify the anglers’ obligations when marking their hoop nets. The previous boundary at Point Arguello has been removed, making the marking requirement mandatory across the state. Anglers are required to mark their hoop nets with their GO IDs, a unique identification number issued by the Department’s Automatic License Data System (ALDS) and permanently tied to each individual. The number can serve as a way for enforcement officers to identify the operator of a hoop net and track the number of nets people are using. Anyone can obtain a GO ID by creating a profile at the ALDS website (<https://wildlife.ca.gov/Licensing/Online-Sales>) at no charge.

This change to a state-wide requirement is necessary to improve gear identification during entanglement and facilitate enforcement of new and existing restrictions on hoop net use. Marking of all hoop nets can

reduce the number of observed entanglements where the fishing gear is not marked and the responsible fishery unknown. Identifying fisheries in the event of a marine life entanglement helps the Department identify entanglement risk in the fishery and develop mitigation measures to reduce the risk. In addition, it reduces the number of unknown entanglements, which negatively impacts the commercial Dungeness crab fishery under the regulation for the Risk Assessment Mitigation Program (Section 132.8).

- (A) As with current regulations, the commercial boat registration number is required on the buoy for each hoop net deployed from a CPFV.
- (B) As with current regulations, the guide license number is required on the buoy for each hoop net provided by a licensed guide to clients for use on a guided trip.
- (C) As with current regulations, for hoop nets not deployed from CPFVs or provided by a licensed guide, the operator's GO ID number is required on each buoy. The amendment to this provision specifies that in cases where there are multiple operators, only the GO ID of at least one operator is required.

The marking requirement for hoop nets was adopted in 2017 to ensure accountability and enforceability of hoop net limits. However, the requirement has since created unintended complications for many recreational hoop net users and the Department receives many questions about how to comply with the marking requirements. Under the strictest interpretation of current subsection 29.80(b)(3), every individual on a vessel who is hoop netting for lobster and intends on operating (i.e., pulling) those hoop nets must mark their GO ID on every hoop net deployed from that vessel. As explained previously, this creates an unnecessary burden for almost all hoop net users who operate out of private boats.

The new requirement is necessary to lessen compliance burden and participant confusion, while also streamlining regulatory language. The proposal would clarify that hoop nets only need to be marked with the GO ID of at least one operator. For the recreational hoop net sector, it is often the case that the owner of a recreational vessel also owns every hoop net deployed from that vessel. It is unclear how that vessel owner's GO ID and their passengers' GO IDs should appear on each hoop net under the current marking requirement. In conjunction with the newly proposed subsection 29.80(b)(4)(A), the new changes mean that as long as a hoop net owner is also operating the hoop nets along with at least one other hoop net operator on a vessel, that owner can simply keep their GO ID on all ten of their hoop net buoys.

Furthermore, the references to sport fishing license and spiny lobster report card are removed. The references were added for informational purposes to help inform the public on where they may find their GO IDs. However, with the expansion of the marking requirements to areas north of Point Arguello, there will be minors younger than 16 years old using hoop nets to take Dungeness crab. These individuals can obtain a GO ID, but they are not required to possess a fishing license, a lobster report card, or any other types of permits or licenses. As such keeping the references may create confusion on what these individuals' obligations are in marking their hoop nets.

- (b)(6) The proposed new subsection 29.90(b)(6) would prohibit the deployment and use of hoop nets south of Point Arguello, Santa Barbara County, during the 24-hour period immediately prior to the start time of the recreational lobster season each year.

This regulation is necessary to reduce enforcement burden leading to the opening day for the recreational lobster fishery, which occurs primarily south of Point Arguello. This change would help maintain the integrity of the closed season. Department enforcement officers have observed individuals deploying hoop nets just prior to the start of the recreational lobster season, claiming to be targeting rock crabs. Once the 6:00 am start time for the lobster season arrives, the same individuals immediately begin to retain lobsters. These individuals are essentially deploying their hoop nets for lobsters before the season starts. This restriction is consistent with similar restrictions on deployment and use of a gear type right before a season opening to prevent unequitable head start on the season (e.g., crab traps a week before the start of the sport Dungeness crab trap fishery (subsection 29.80(c)(4)).

There are no proposed changes to subsections 29.80(c) through (j).

### **Section 29.90. Spiny Lobsters.**

Amend subsection 29.90(a), Open Season.

The new recreational season start time would be 6:00 pm on the Friday preceding the first Wednesday in October. The change would move the start of the season 12 hours earlier from the current start time.

The proposed change is necessary to ensure the safety of enforcement officers. Prior to 2017, the recreational lobster season opened at 12:01 am on the Saturday preceding the first Wednesday in October. Under this previous season schedule, a wildlife officer would start their shift at approximately 9 to 10 pm on Friday evening to deter early divers and hoop net users, and work through the opener into the early morning on Saturday. The same officer would then be able to rest throughout the day (10 to 12 hours) and start their next shift at approximately 6 to 8 pm on Saturday

evening, working into Sunday morning. After another 10 to 12 hours of rest, the officer could repeat the same shift for Sunday evening.

Moving the opener to 6 am on Saturday morning greatly changed this dynamic. With this change, officers must still be posted on Friday evening to catch individuals who are attempting to start fishing before the season or are otherwise unaware of the change to the midnight season start. After midnight, the officers would get a few hours rest to start their next shift at approximately 3 to 4 am on Saturday morning to catch early divers and hoop net users and continue working until approximately 12 to 2 pm. If there are not enough officers to take over the next shift, which is often the case, the same officer would have to return for the next shift starting in early evening and into the following morning, after at most only another 4 to 5 hours of rest.

The current schedule thus forces enforcement officers to make the difficult choice of either reducing enforcement coverage of one of the most important fisheries in the state or work potentially back-to-back-to-back 8-plus hours of shifts. During the 2021 season opener, roughly four in every ten officers available to staff the recreational lobster opener elected to work through consecutive shifts. Given the conditions that enforcement officers are working under (operating boats during the day and at night while keeping an eye out for divers and buoys, interacting with potentially disruptive participants, etc.), overworking and exhaustion pose a significant safety risk to officers. Moving the recreational start time to 6 pm Friday captures all enforcement needs in a single shift and therefore addressing enforcement concerns. In addition, this new start time would also address the safety issues surrounding a midnight opener by starting the season during daylight 30 to 45 minutes before sunset. Lastly the proposed time would not take fishing time away from the recreational fishery.

Subsection 29.90(b), Limit: Seven. There is no change to this provision.

Amend subsection 29.90(c), Minimum size.

The possession of undersized lobster is not permitted. The proposed changes to subsection 29.90(c) would standardize and clarify recreational participants' obligation to promptly measure all lobsters taken and to return any undersized lobsters immediately back to the ocean. Under the new regulation, no undersized lobsters may be possessed in any type of container. All lobsters must still be measured immediately after they are taken, as before. Divers would continue to be required to measure lobsters while they are still in the water, while hoop net users are required to immediately measure lobsters upon their removal from the water.

The 2017 regulatory change clarified subsection 29.90(c) to allow hoop net users to take lobsters out of the water to measure them, provided that "no undersize lobster may be placed in any type of receiver, kept on the person or retained in any person's possession or under his or her direct control." This phrase inadvertently left out divers, so that the prohibition on the possession of short lobsters in a game bag or other container only applied to hoop net users. Enforcement officers have caught divers entering the surf zone with undersize lobsters in their game bags, who then told the officers that they would measure the lobsters in the surf zone. In such a

situation, it is practically impossible to distinguish good-faith individuals from poachers. To prevent such occurrences, and to standardize expectations between all recreational participants, both hoop net users and divers are prohibited from placing undersize lobsters in any type of container, be it a cooler or a game bag. This clarification effectively matches the regulation requirements prior to the 2017 change.

The word “spiny” is added in front of the word “lobster” where applicable to maintain consistency to usage elsewhere in the regulation. Consistency and specificity here are important especially in the context of possession since these regulations only apply the species of *P. interruptus*, not lobsters generally.

Renumber subsection 29.90(e) to (d).

There is no change to this provision. The current subsection 29.90(e) is moved to (d) to improve organization of the regulations.

Renumber subsection 29.90(d) to (e), Report Card Required.

The current subsection 29.90(d) is renumbered as subsection 29.90(e) to improve organization of the regulations. Minor changes: “Sections” is replaced with “sections” for consistency with the Commission’s standard capitalization rules and “spiny” is added in front of the word “lobster.”

**Section 29.91. Spiny Lobster Report Card Requirements for Ocean Waters (FG 685, See Section 701).**

Amend subsection 29.91(a), Spiny Lobster Report Card Required.

There are no amendments to the provision requiring a Report Card except the addition of “spiny” in front of the word “lobster” and changing the word “Section” to “section” pursuant to the Commission’s standard rules for capitalization.

Amend subsection 29.91(b).

The proposed change clarifies when a report card holder is required to record the month, day, location, and gear code on the report card by defining “Prior to beginning fishing activity.” Once a hoop net user has deployed the first net or a diver has entered the ocean, the attempt to fish for lobster is considered to have begun and the corresponding information should appear on the report card. This is necessary to improve clarity and enforceability since the existing language of “prior to beginning fishing activity” is ambiguous, as fishing activity can be broadly defined to include a range of preparatory work.

Amend subsection 29.91(c), Cardholder.

There are no amendments to the provision requiring a record of take, except the term “he or she” is replaced with the term “cardholder” to clarify the regulation and the addition of the word “spiny” in front of the word “lobster.”

There are no proposed changes to subsections 29.91(d) and (e).

## **Section 121. Spiny Lobster. Open Season and Possession during Closed Season**

In the section title, “Lobster, Spiny” is amended to “Spiny Lobster.”

Amend subsection 121(a).

The scientific name “(*Panulirus interruptus*)” is added to clarify the specific species for take. There are no other amendments to this provision for the dates of the open season.

Amend subsection 121(b).

The word “spiny” is added prior to the word “lobster” in three places.

## **Section 121.5. Spiny Lobster. Minimum Size and Verification.**

In the section title, “Lobster, Spiny” is amended to “Spiny Lobster.”

Subsection 121.5(a). No changes.

Amend subsection 121.5(b).

The sentence “A trap shall be serviced prior to any additional trap being brought aboard a vessel.” would be replaced with the sentence “When a trap is pulled to the surface, any spiny lobster within shall be measured immediately and prior to any additional traps being pulled to the surface.” The purpose of the service requirement is to ensure that undersized lobsters are returned to the water as soon as possible. The new language is also necessary to help facilitate enforcement. The term “immediately” conveys the time-sensitive nature of returning lobsters back to their habitat as soon as possible.

Minor changes to subsections 121.5(b), (c), and (d).

The word “spiny” is added in front of the word “lobster” where applicable to maintain consistency to the word’s usage elsewhere in the regulation.

The term “Section” has been changed to “subsection” in subsection 121.5(c) to accurately reflect the reference.

The reference of “(*Panulirus interruptus*)” in subsection 121.5(c) is deleted as repetitive with subsection 121(a).

## **Section 122. Spiny Lobster Permits and Restricted Areas.**

Amend subsection 122(a).

The word “Spiny” is added in front of the word “Lobster” to maintain consistency to the word’s usage elsewhere in the regulation.

There are no proposed changes to subsections 122(a)(1), (3), or (4).

Amend subsection 122(a)(2).

The proposed change moves the commercial lobster fishery’s boundary along the southern coast of Santa Catalina Island. Commercial lobster operators currently may

take lobsters between China Point, on the west, and Southeast Rock, on the east. This proposal would move the eastern boundary from Southeast Rock to Church Rock, expanding the fishing area by about 60 feet. While the two locations are adjacent to each other as part of the same rock outcropping, Church Rock is more prominent and much better known than Southeast Rock (Figure 3). The change merely clarifies the demarcation with a more distinctive geographical feature.

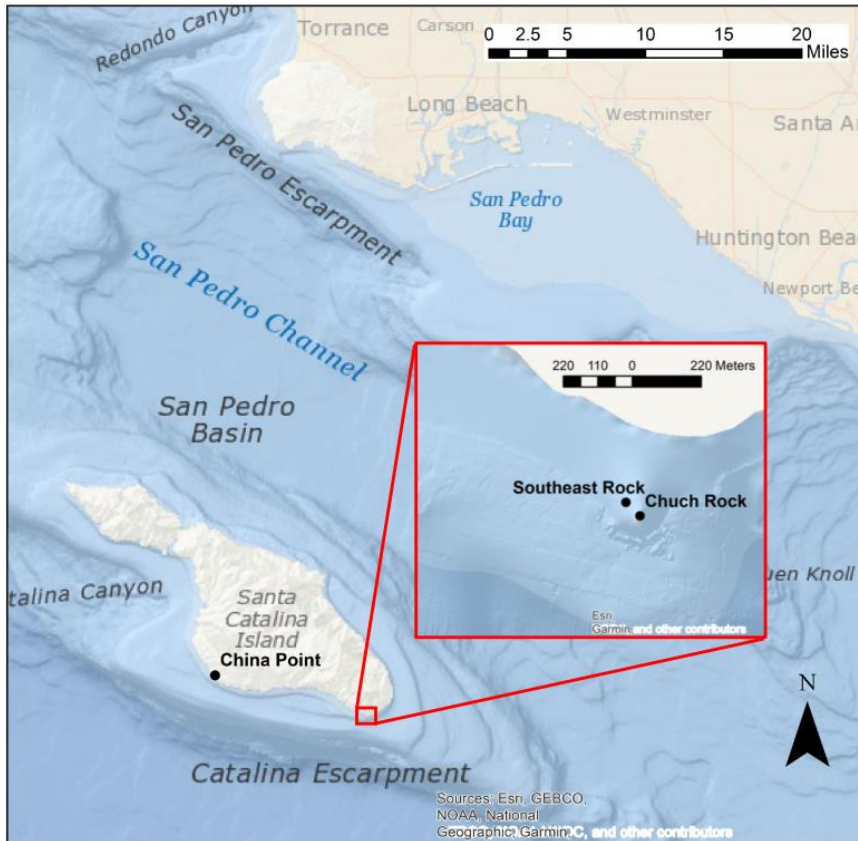


Figure 3: Positions of Southeast Rock (smaller rock on the left) and Church Rock (larger rock on the right) on the south side of Santa Catalina Island.

There are no proposed changes to subsections 122(b) through (h).

### **Section 122.1: Spiny Lobster Buoys and Trap Tags.**

Amend title and subsection 122(a).

The word “spiny” is added in front of the word “lobster” to maintain consistency to the word’s usage elsewhere in the regulation.

Amend subsection 122.1(b).

The added language requires commercial permit holders to mark their lobster receiver buoys clearly and distinctly with their commercial fishing license identification numbers. The numbers must be at least 1.5 inches in height and drawn with a line at least 0.25 inch thick. In addition, the phrase “each buoy marking any lobster trap” would be amended to “any buoy that marks a spiny lobster trap” to better convey the explicitness of the requirement.



Department enforcement officers have found undersize lobsters inside unmarked receivers making identification of the actual owner difficult. Furthermore, officers have been notified of individuals potentially tampering with receivers that do not belong to them. Identification will help identify the owner of the receiver and help provide probable cause for illegal take, theft, and tampering of receivers. The size and coloring requirements of the identifications are drawn from the trap buoy marking requirements under Section 180.5 to maintain consistency across regulations.

Amend subsection 122.1(c), Trap Tag Requirement.

There are no proposed changes to subsections 122.1(c), 122.1(c)(1), 122.1(c)(2) or 122.1(c)(2)(A).

In subsection (c)(2)(B) an Oxford comma is added for grammatical correctness.

Amend subsection 122.1(c)(2)(C).

The term “affidavit” is replaced with “Lobster Operator Permit Catastrophic Lost Trap Tag Affidavit, DFW 1701 (New 2/2016), incorporated by reference herein.” The form is currently incorporated under Section 705 which has generally been used for listing fishing permits that require the payment of fees and their respective prices. Since there is no fee, the Lobster Operator Permit Catastrophic Lost Trap Tag Affidavit does not fit into that category of forms.

There are no proposed changes to subsections 122.1(c)(2)(D) and (E).

## **Section 122.2. Pulling Spiny Lobster Traps.**

In the title, the word “Spiny” is added in front of the word “Lobster” to maintain consistency to the word’s usage elsewhere in the regulation.

There are no proposed changes to subsections 122.2(a) through (e).

Amend subsection 122.2(f).

The changes provide commercial permit holders with an additional 15 days to complete their *End of Season Spiny Lobster Trap Loss Reporting Affidavit* (DFW 1020). The deadline is changed from April 15 to April 30 of each year. In addition, the new revised Affidavit will be incorporated into this subsection and removed from Section 705.

This proposed change is in response to feedback from the fishing community and is necessary to reduce compliance burden. The issue was first raised by commercial lobster operators during a meeting with Department staff on August 6, 2019. Commercial lobster operators have struggled to juggle a myriad of end-of-season activities and are often pressed to complete the Affidavit on-time. While an additional 15 days may seem small, it could provide the necessary cushion for the operators to complete and submit the form. However, setting the deadline too far after season closure could lead to permit holders forgetting to submit the Affidavit all together. Additionally, staff experience in the preceding five years show that an additional

extension of 15 days would not materially impact the Department's own end-of-season management activities.

The incorporation of the Affidavit into this section is necessary to improve the clarity of the regulations. The form is currently incorporated under Section 705, which has generally been used for listing fishing permits that require the payment of fees and their respective prices. Since there is no fee, the Affidavit does not fit into that category of forms. The form will be updated to its new version date.

In addition, the term "he/she holds" would be replaced with "they hold" (referring to the permit holder) to help clarify the regulation.

There are no proposed changes to subsection 122.2(g).

Amend subsection 122.2(h).

The change adds "disturb" to the list of prohibited activities on lobster traps of other people. This is necessary to help improve enforceability of the section and is consistent with FGC Section 9002. In addition, the term "his/her" would be replaced with "their" (referring to the permit holder) to help clarify the regulation.

Add new subsection 122.2(h)(1)(A), In-season Trap Retrieval.

The proposed new subsection 122.2(h)(1)(A) would make permission from trap owners mandatory during any in-season trap retrieval. Under this proposal, a commercial permit holder would be able to retrieve up to six traps belonging to another permit holder only if the permit holder retrieving the trap possesses a dated written note from the trap's owner authorizing such retrieval. This note shall contain the commercial fishing license identification number of that trap owner. All other requirements under subsection (h)(1) would remain the same. Lobsters found within such traps must be discarded, the retriever must document the circumstances and details surrounding a retrieval, and traps retrieved under the authorization of a note cannot be redeployed by the retriever.

This change will formally establish a system where lost or derelict traps can be recovered only by permit holders with explicit permission from the trap owner. Before the 2017 regulations went into effect, an informal system existed allowing for the unlimited recovery of lost or derelict traps by specific permit holders authorized by the trap owner. Since the 2017 regulatory changes went into effect, any commercial lobster operator may recover up to six lost or derelict traps owned by another operator. After 2017, concerns from the fishing community were raised that, if left unchanged, the provision could provide an avenue for gear theft, tampering, and theft of catch. Since then, numerous complaints have been filed and one case was prosecuted. Requiring authorization from trap owners and ensuring that the trap owners' identification numbers are available for comparison against the traps being retrieved are necessary to deter gear tampering and theft.

Due to the newly-added subsection (h)(1)(A), the current subsections (A) through (D) will be sequentially renumbered as subsections (B) through (E) to ensure consistent numbering.

In subsections 122.2(h)(1)(C) and (h)(2)(F), the word “spiny” is added in front of the word “lobster” to maintain consistency to the word’s usage elsewhere in the regulation. In subsection 122(h)(2)(A), the term “his/her” would be replaced with “their” (referring to the permit holder) to help clarify the regulation. No other changes are proposed for subsections 122.2(h)(2) and (h)(3).

### **Section 705. Commercial Fishing Applications, Permits, Tags and Fees.**

There are no proposed changes to subsections 705(a) through (c)(4).

Amend subsections 705(c)(5) and (7), Tags and Miscellaneous, Fees.

The Lobster Operator Permit Catastrophic Lost Trap Tag Affidavit, form DFW 1701, is deleted from subsection 705(c)(5) and moved to subsection 122.1(c)(2)(C). The End of Season Spiny Lobster Trap Loss Reporting Affidavit, form DFW 1020, is deleted from subsection 705(c)(7) and moved to subsection 122.2(f). Current subsections 705(c)(6) and (c)(8) are renumbered to (c)(5) and (c)(6), respectively.

There are no proposed changes to subsection 705(d).

### **Authority and Reference Citations.**

Authority and reference citations for sections 29.80, 29.90, 29.91, 121, 121.5 and 122 will be updated.

### **Form DFW 1020. End of Season Spiny Lobster Trap Loss Reporting Affidavit.**

The amended form will have several editorial changes to help improve clarity, improve Department operation, and ensure consistency throughout the form. The word “instructions” at the top would be bolded to help draw attention to the most important information concerning the return of the affidavit. The deadline for submission of the Affidavit is revised for consistency with and for the purpose explained above under Section 122.2. The email “Lobster@wildlife.ca.gov” has been added as an accepted recipient to allow for electronic transmission. The Instruction “please print clearly” is replaced with a bolded “type or print clearly” to account for electronic transmission. A new row inquiring the physical address of the reporter (in addition to mailing address) will be required to help facilitate communications from the Department. In addition, the “Commercial Fishing License Number” at the top of page 1 and “Commercial Fish License #” at the top of page 2, would be converted to “Commercial Fishing ID #.” The term “Lobster Operator Permit Number” at the top of page 1 would be converted to “Lobster Operator Permit #” for consistency with the field at the top of page 2. Staff have decided to use the shorter terms in both instances to conserve space.

The open text box within the current form DFW1020 (02/18/16) that allows a commercial operator to describe the circumstances surrounding each trap loss would be converted to a fillable table. The open text box often leads to permit holders submitting incomplete data or not submitting the requested data at all. Furthermore, Department staff must undertake the time-consuming and imperfect process of estimating locations of trap loss based on other lobster log and landing receipt data. An additional page of

tabular boxes is further provided as a third page of the form if additional rows are needed. The form will now request:

- last known fishing block the traps were in,
- approximate date of trap loss,
- number of traps lost, and
- options for the specific reason that traps were lost, if known, which include boat traffic, line entanglement/breakage, weather/ocean conditions, theft/tempering, and “other.”

The table would look as follows:

Last Known Fishing Block	Approximate Date (MM-DD-YYYY)	Number of Traps Lost	Reason for Loss if known
			<input type="checkbox"/> Boat traffic <input type="checkbox"/> Line tangled/broke <input type="checkbox"/> Weather/ocean conditions <input type="checkbox"/> Theft/tampering <input type="checkbox"/> Other: _____
			<input type="checkbox"/> Boat traffic <input type="checkbox"/> Line tangled/broke <input type="checkbox"/> Weather/ocean conditions <input type="checkbox"/> Theft/tampering <input type="checkbox"/> Other: _____

The form now asks commercial operators to fill out the last known fishing blocks that the lost traps were located in as opposed to GPS coordinates. These block numbers are commonly used in the lobster fishery thus making it easier to complete the form. Switching to fishing block is necessary because operators are often reluctant to share the exact GPS coordinates of their fishing grounds and many permit holders often give abbreviated coordinates that do not provide any higher spatial resolution than just recording the fishing block number. Given the inconsistencies of permit holders reporting of spatial information surrounding trap loss, staff have only been able to estimate loss by fishing block as the highest spatial resolution of trap loss. A map of the fishing block is currently incorporated, among other places, as part of the Daily Lobster Log (DFW 122) under subsection 122(e). DFW 122 is in turn a form that every commercial lobster operator must fill out pursuant to subsection 122(e), and thus is familiar to every operator.

The number of traps lost, and date and location of trap loss are already currently requested on the form. The revised form includes a new field for the total number of tags used. This data is necessary in order for staff to characterize the severity of a trap loss event. The loss of a large number of traps (e.g., 50) on a single day or fishing trip would indicate a particularly intense event, such as a storm or high swell. This knowledge would help focus post-season gear recovery efforts by identifying where a large number of traps could have moved after becoming lost, while the loss of one or a few traps on a single day or fishing trip is pretty typical. Similarly, knowing how many trap tags used, which represents the number of traps used, would also help contextualize the severity of these occurrences (e.g., losing 5 out of 50 deployed traps

is more significant relative to the permit holder and their fishing behavior than losing 5 out of 300 deployed traps). The data could also help Department staff evaluate the merit of the catastrophic loss threshold. This threshold, when reached, allows a commercial operator to apply for replacement trap tags and is currently set at 75 traps.

The four enumerated reasons for trap loss are considered by staff to be the most common reasons for operators to lose traps as submitted by permit holders in past affidavits, and an open-ended option preserves the possibility of other less-common events.

The reference to Section 746 in the certification statement would be removed, since the section only provides the process for permit revocation, not a cause for any revocation. Finally, a new privacy statement has been added pursuant to the requirement of Civil Code 1798.17, which requires state agencies to provide a privacy notice when requesting information from individuals.

(b) Goals and Benefits of the Regulation

Pursuant to FGC Section 7050, it is the state's policy, among others, to "[c]onserve the health and diversity of marine ecosystems and marine living resources" and to "[a]llow and encourage only those activities and uses of marine living resources that are sustainable." The proposed regulations would help improve the enforceability of current regulations governing the spiny lobster fisheries and help conserve natural resources, as well as improve user experience. The proposed changes are in line with the October 2022 emergency regulation and would help mitigate potential entanglement risk towards marine life.

(c) Authority and Reference Sections from Fish and Game Code for Regulation

29.80 Authority: Sections 200, 205, 7075 and 7078, Fish and Game Code.

Reference: Sections 200, 205, 270, 275, 7050, 7055 and 7056, Fish and Game Code.

29.90 Authority: Sections 200, 205, 7075, and 7078, Fish and Game Code.

Reference: Sections 200, 205, 255, 275, 7050, 7055 and 7056, Fish and Game Code.

29.91 Authority: Sections 200, 205, 7075, and 7078, Fish and Game Code.

Reference: Sections 200, 205, 265, 7050, 7075 and 7078, Fish and Game Code.

121 Authority: Sections 2365, 7075 and 7078, Fish and Game Code.

Reference: Sections 2365, 7050, 7075, 7078 and 8254, Fish and Game Code.

121.5 Authority: Sections 2365, 7075, 7078 and 8254, Fish and Game Code.

Reference: Sections 2365, 7050, 7075, 7078 and 8254, Fish and Game Code.

122 Authority: Sections 1050, 7075, 7078, 8254 and 8259, Fish and Game Code.

Reference: Sections 1050, 2365, 7050, 7055, 7056, 7071, 7852.2, 8026,

8043, 8046, 8250, 8250.5, 8254, 9002, 9005, 9006 and 9010, Fish and Game Code.

122.1 Authority: Sections 7075, 7078 and 9005, Fish and Game Code.  
Reference: Sections 7050, 7055, 7056, 8250.5, 9002, 9005 and 9010 Fish and Game Code.

122.2 Authority: Sections 1050 and 7078, Fish and Game Code.  
Reference: Sections 7050, 7055, 7056, 8250.5, 8251, 9002 and 9010, Fish and Game Code.

705 Authority: Sections 713 and 1050, Fish and Game Code.  
Reference: Sections 713 and 1050, Fish and Game Code.

(d) Specific Technology or Equipment Required by Regulatory Change: None

(e) Identification of Reports or Documents Supporting Regulation Change

- Commission (2022). State of California Fish and Game Commission Marine Resources Committee — July 14, 2022 Meeting Summary, Item 5: California Spiny Lobster Fishery Regulations.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=203037&inline>
- Commission (2020). State of California Fish and Game Commission Initial Statement of Reasons for Regulatory Action — Re: Recreational Crab Trap Fishery Marine Life Protection Measures.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=183155&inline>
- Commission (2019). Petition to the California Fish and Game Commission for Regulation Change, Petition #2019-004.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=169813&inline>
- Commission (2010). State of California Fish and Game Commission Initial Statement of Reasons for Regulatory Action — Re: Gear Restrictions.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=204849&inline>
- Department (2022). Commercial Spiny Lobster Tailing and Post-Season Possession Survey Results.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=203449&inline>
- Department (2020). State of California Department of Fish and Wildlife Amended Initial Statement of Reasons for Regulatory Action — Re: Risk Assessment Mitigation Program: Commercial Dungeness Crab Fishery.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=180697&inline>
- Department (2016). California Spiny Lobster Fishery Management Plan.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=121938&inline>
- Saez et al. (2021). Large Whale Entanglements off the U.S. West Coast, from 1982-2017, NOAA Technical Memorandum NMFS-OPR-63A.  
<https://tethys.pnnl.gov/sites/default/files/publications/Saez-et-al-2021.pdf>

- Working Group (2021). California Dungeness Crab Fishing Gear Working Group (Working Group) Management Recommendation Form to inform the Risk Assessment and Mitigation Program for the California Department of Fish and Wildlife- Working Discussion Date: November 17, 2021.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=195722&inline>

(f) Public Discussions of Proposed Regulations Prior to Notice Publication

- Commercial lobster fleet meeting 2020 (7/31/2020) held via Microsoft Teams
- Commercial lobster fleet meeting 2021 (8/20/2021) held via Microsoft Teams
- Recreational lobster fleet informational meeting (5/26/2022) held via Microsoft Teams
- July 2022 Marine Resources Committee meeting

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

During the outreach period, the commercial lobster fishery sector proposed two significant regulatory changes that would also help improve their experience utilizing the spiny lobster resources. They are the following:

1. Allow lobster tailing: Lobster tails are easier to preserve, transport, and sell. This would allow the fishery to pivot to domestic market in the event of sudden market shock, particularly if the foreign live export market is suspended or lost.
2. Allow post-season retention of lobsters: It currently takes between five and ten days for processors to locate air freight and send lobsters overseas. As such lobster exporters currently stop accepting lobster landings approximately one week before the season closes. Loosening the retention requirement could allow the commercial fleet to continue harvesting lobsters for the live export market until the season ends.

Department staff queried the commercial lobster sector on support for these two issues, and the majority of the responses were negative. Due to the incredible value that California spiny lobster commands, any significant changes to the possession and processing of the landed catch would inevitably create substantial enforcement, and thus biological, concerns. Consensus and support among the sector are thus crucial if such changes are to have any chance of succeeding. Department staff will continue to work with stakeholders to explore the various options on the matters. However, at the moment, the issues are not ready for regulatory actions.

No other alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

(b) No Change Alternative

Without the proposed changes, the outstanding issues concerning the regulations currently governing the lobster fishery and the marine life entanglement risks posed by the new type of recreational hoop net would remain unaddressed.

## 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 regulation 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. regulation. 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 CPFVs 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 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.

## VII. Economic Impact Assessment

The proposed regulations would help improve the enforceability of current regulations governing the spiny lobster fisheries, improve fishery participants' experience and help conserve natural resources, and mitigate potential entanglement risks.

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The Commission does not anticipate impacts on the creation or elimination of jobs within the state because the proposed regulations are unlikely to change the demand for goods or services related to the spiny lobster and recreational crab fisheries.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The Commission does not anticipate impacts on the creation of new business or the elimination of existing businesses within the state because the proposed regulations are unlikely to change the demand for goods or services related to the spiny lobster and recreational crab fisheries.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The Commission does not anticipate impacts on the expansion of businesses currently doing business within the state because the proposed regulations are unlikely to change the demand for goods or services related to the spiny lobster and recreational crab fisheries.

(d) Benefits of the Regulation to the Health and Welfare of California Residents:

The Commission does not anticipate impacts on the health and welfare of California residents.

(e) Benefits of the Regulation to Worker Safety:

The Commission anticipates positive impacts to worker safety. The proposed change to 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 the first Wednesday is anticipated to relieve some safety issues experienced by Department law enforcement officers.

(f) Benefits of the Regulation to the State's Environment:

The Commission anticipates benefits to the state's environment by sustainably managing California's ocean resources and reducing bycatch.

(g) Other Benefits of the Regulation:

The Commission anticipates improvements to the enforceability of current regulations governing the spiny lobster and recreational crab fisheries.

## 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.