

STAFF SUMMARY FOR FEBRUARY 8-9, 2023 FGC

24. CALIFORNIA SPINY LOBSTER AND RECREATIONAL HOOP NETS**Today's Item****Information** ☒**Action** ☐

Discuss proposed amendments to regulations for (a) commercial and recreational take of California spiny lobster, and (b) recreational hoop net requirements for take of crustaceans.

Summary of Previous/Future Actions

- Adopted California spiny lobster fishery management plan (lobster FMP) Jun 22-23, 2016
- Marine Resources Committee discussed proposed lobster regulation changes and recommendation Jul 14, 2022
- Department requested adding statewide hoop net changes to *regular* lobster rulemaking Aug 17, 2022
- Adopted *emergency* hoop net regulation changes Oct 12-13, 2022
- Notice hearing for *regular* rulemaking for lobster and hoop net regulation changes Dec 14-15, 2022
- **Today's discussion hearing for *regular* rulemaking for lobster and hoop net regulation changes** **Feb 8-9, 2023**
- Today's adoption hearing for 90-day extension of *emergency* regulation changes (Item 22) Feb 8-9, 2023
- Adoption hearing for *regular* rulemaking for lobster and hoop net regulation changes Apr 19-20, 2023
- Adoption hearing for second 90-day extension of *emergency* regulation changes Jun 14-15, 2023
- Potential effective date for *regular* rulemaking for lobster and hoop net regulation changes Sep 1, 2023 (estimate)

Background

At its December 2022 meeting, the Commission authorized publication of a notice of intent to (a) fine-tune existing regulations controlling the recreational and commercial spiny lobster fisheries (adopted in 2016 to implement the lobster FMP) and (b) amend rules on the recreational use of hoop nets statewide for the take of crustaceans; Exhibit 4 provides a summary of the proposed changes.

Incorporated into this regular rulemaking are *emergency* regulation changes the Commission adopted at its October 2022 meeting to amend and clarify hoop net regulations. The emergency regulation changes are proposed to be extended under Agenda Item 22 (this meeting); see that item for background regarding the emergency hoop net regulations.

For this agenda item, today's meeting is an opportunity for public discussion of the proposed regulation changes in the *regular* rulemaking.

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Significant Public Comments (N/A)

Recommendation (N/A)

Exhibits

1. [Department memo, received December 1, 2022](#)
2. [Initial statement of reasons](#)
3. [Proposed regulatory language](#)
4. [Staff summary for December 14-15, 2022 Commission meeting, Agenda Item 4 \(for background purposes only\)](#)

Motion (N/A)

Memorandum

Date: November 30, 2022

To: Melissa Miller-Henson
Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director

Subject: **Submission of Initial Statement of Reasons for Agenda Item for the December 14-15, 2022, Fish and Game Commission Meeting - RE: Commercial and Recreational Take of California Spiny Lobster; Recreational Hoop Net Requirements for Take of Crustaceans**

The Department of Fish and Wildlife (Department) requests the Fish and Game Commission (Commission) authorize publication of notice of its intent 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 (CCR), for the lobster and hoop net regulations adjustments. Authorization of this request will allow for possible adoption at the April 19-20, 2023 Commission meeting.

The Department is submitting the attached Initial Statement of Reasons (ISOR) proposing to fine-tune the existing regulations controlling the recreational and commercial spiny lobster fisheries. The changes would help improve the regulations governing the fisheries, last amended by the Commission in 2016, primarily by improving enforcement and reducing the public's regulatory burden. In addition, the ISOR also proposes to amend rules on the recreational use of hoop nets, most of which were adopted through an emergency rulemaking at the October 2022 Commission meeting. The proposed changes to rules governing recreational hoop net use aim to reduce the risk of entanglement for protected marine wildlife.

If you have any questions or need additional information, please contact Dr. Craig Shuman, Marine Regional Manager at (916) 215-9694, or by email at R7RegionalMgr@wildlife.ca.gov.

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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).

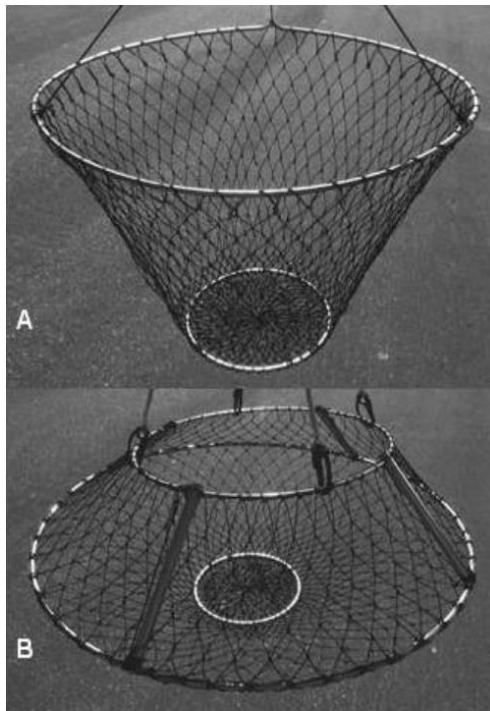


Figure 1: Current Type A Hoop Net (A) and Type B Hoop Net (B).

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 ¼ 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.

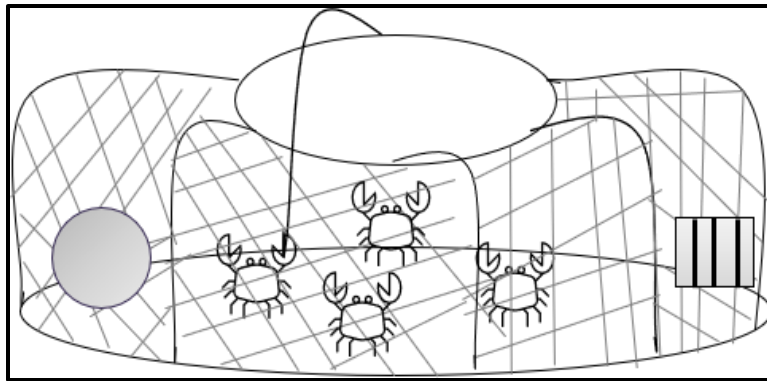


Figure 2: Rendition of recently developed hoop net that could function more similarly to a trap.

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.

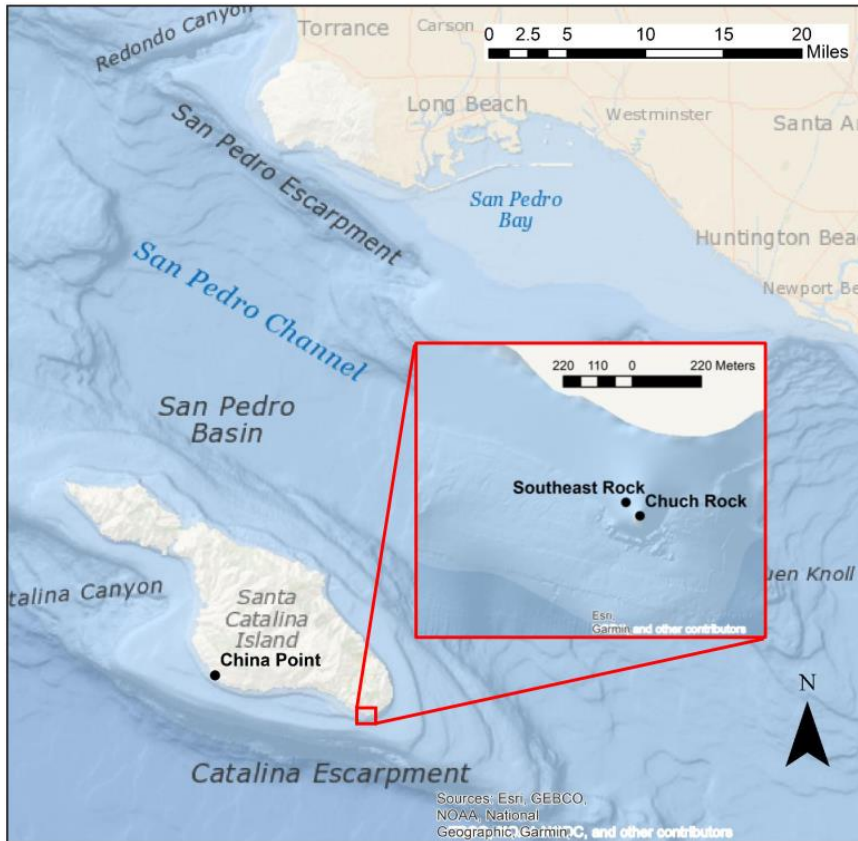


Figure 3: Positions of Southeast Rock (smaller rock on the left) and Church Rock (larger rock on the right) on the south side of Santa Catalina Island.

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.

Proposed Regulatory Language

Section 29.80, Title 14, CCR, is amended to read:

§ 29.80. Gear Restrictions for Recreational Take of Saltwater Crustaceans.

...[No proposed changes to subsection (a)]

(b) Hoop nets. Hoop nets may be used to take spiny lobsters and all species of crabs. ~~Between Point Arguello, Santa Barbara County, and the United States-Mexico border, not more than five hoop nets shall be possessed by a person when taking spiny lobster or crab, not to exceed a total of 10 hoop nets possessed when taking spiny lobster or crab per vessel. The owner of the hoop net or person who placed the hoop net into the water shall raise the hoop net to the surface and inspect the contents of the hoop net at intervals not to exceed 2 hours.~~

(1) Hoop Net Defined: ~~There are two types of hoop nets allowed for use:~~ Only Type A and Type B hoop nets, as described below, are allowed for use:

(A) Type A: Fishing gear that is comprised of one to three rigid ring(s), with each ring measuring no greater than 36 inches in inside diameter nor less than 10 inches in inside diameter, which is/are connected to non-metallic soft mesh thereby forming a circular-shaped net with an enclosed ~~bottom.~~ bottom and with the following specifications:

1. Lift lines shall be attached only to the top ~~ring.~~ ring;

2. A second and third rigid ring(s) may be connected by non-metallic soft mesh to the top ring; however, each ring must be equal in size to or smaller than the ring above ~~it.~~ it;

3. When the net is being ~~raised.~~ raised, the top ring shall be above and parallel to all other rings, with the enclosed bottom portion of the non-metallic soft mesh even with or hanging below all other ~~rings.~~ rings;

4. All parts of the hoop net shall collapse and lie flat when resting on the ocean floor in such a manner that the gear does not entrap or restrict the free movement of crustaceans until ~~lifted.~~ lifted;

5. When suspended from lift lines, the entire hoop net shall measure no taller than 36 ~~inches.~~ inches; and

6. The ring material shall not be thicker than one inch in any dimension.

(B) Type B: Fishing gear that is comprised of only two ~~to three~~ rigid rings (not including the bait ring), with ~~each the bottom~~ ring measuring no greater than 36 inches in inside diameter and the top ring measuring no less than 15 inches in inside ~~diameter.~~ diameter and with the following specifications:

1. The ~~upper ring or rings.~~ top ring shall be connected to the bottom ring and supported by no more than six rigid straight support arms, and the assembled frame shall measure no more than 10 inches ~~tall.~~ tall;

2. The rings and support material shall not be thicker than one inch in any dimension. ~~dimension;~~
 3. All rings shall be connected by non-metallic soft mesh, thereby forming a net with an enclosed ~~bottom, and bottom;~~
 4. ~~Lift~~ lift-lines shall be attached only to the top ring. ~~ring;~~
 5. When suspended from lift ~~lines~~lines, the enclosed bottom portion of the net shall be even with or hanging below ~~all other the rings~~ the bottom ring, and the entire net shall measure no taller than 30 ~~inches. inches;~~
 6. It is unlawful to have any entrances below the top ring; and
 7. A bait ring may be used if it is attached to the bottom half of the net as long as the ring and it is not attached to any part of the rigid frame.
- ~~(2) Any hoop net abandoned or left unchecked for more than 2 hours shall be considered abandoned and seized by any person authorized to enforce these regulations.~~
- ~~(3) Hoop nets used south of Point Arguello, Santa Barbara County shall be marked with a surface buoy. Except as provided below, the surface buoy shall be legibly marked to identify the operator's GO ID number as stated on the operator's sport fishing license or lobster report card. This section does not apply to hoop nets deployed by persons on shore or manmade structures connected to the shore.~~
- ~~(A) The surface buoy of hoop nets deployed from commercial passenger fishing vessels shall be legibly marked to identify the commercial boat registration number of the vessel.~~
- ~~(B) The surface buoy of hoop nets provided by a licensed guide to clients for use on guided trips shall be legibly marked to identify the guide license number of the accompanying guide.~~
- (2) 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 2 hours.
- (3) It is unlawful to abandon or leave unchecked a hoop net for more than 2 hours. Any hoop net left unchecked for more than 2 hours shall be considered abandoned and may be seized by any person authorized to enforce these regulations.
- (4) Limits: Except for the limit of two hoop nets when taking crabs from a public pier under subsection 28.65(b), the following limits apply when taking spiny lobster or crab.
- (A) Between Point Arguello, Santa Barbara County, and the United States-Mexico border, not more than five hoop nets shall be possessed or deployed by a person, unless when two or more persons are on a vessel, in which case not more than 10 hoop nets may be possessed or deployed from such vessel.
- (B) North of Point Arguello to the California-Oregon border, there is no limit on the number of hoop nets that may be possessed or deployed.

(5) Hoop Net Identification Requirements: All hoop nets shall be marked with a surface buoy except those hoop nets deployed by persons on shore or manmade structures connected to the shore.

(A) The surface buoy of hoop nets deployed from commercial passenger fishing vessels shall be legibly marked to identify the commercial boat registration number of the vessel.

(B) The surface buoy of hoop nets provided by a licensed guide to clients for use on guided trips shall be legibly marked to identify the guide license number of the accompanying guide.

(C) In all other cases, the surface buoy of any deployed hoop net shall be legibly marked with the operator's GO ID number, or the GO ID number of at least one operator if there are multiple operators.

(6) Hoop nets shall not be deployed and used in ocean waters south of Point Arguello, Santa Barbara County, during the 24-hour period prior to the opening of the recreational spiny lobster season.

...[No proposed changes to subsections (c) through (j)]

Note: Authority cited: Sections 200, 205, ~~265, 275~~, 7075 and 7078, Fish and Game Code.

Reference: Sections 200, 205, ~~265, 270~~, 275, 7050, 7055 and 7056, Fish and Game Code.

Section 29.90, Title 14, CCR, is amended to read:

§ 29.90. Spiny Lobsters.

(a) Open season: From ~~6:00 a.m. on the Saturday~~ 6:00 p.m. on the Friday preceding the first Wednesday in October through the first Wednesday after the 15th of March.

(b) Limit: Seven.

(c) Minimum size: 3 and 1/4 inches measured in a straight line on the mid-line of the back from the rear edge of the eye socket to the rear edge of the body shell. All spiny lobsters shall be measured immediately and any undersize spiny lobster shall be released immediately into the water. Undersize spiny lobster shall not be placed in any type of receiver, bag, or other container, kept on the person or retained in any person's possession or under their direct control. Divers shall measure spiny lobsters while in the water and shall not remove undersized spiny lobsters from the water, and hoop net operators shall measure spiny lobsters immediately upon removal from the water. ~~Hoop netters may measure lobsters out of the water, but 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.~~

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

~~(d)~~(e) Report Card Required: Any person fishing for or taking spiny lobster shall have in their possession a nontransferable Spiny Lobster Report Card issued by the department and shall adhere to all reporting requirements for spiny lobster defined in ~~Sections~~ sections 1.74 and 29.91, Title 14, CCR.

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

Note: Authority cited: Sections 200, 205, ~~219, 265, 275,~~ 7075 and 7078, Fish and Game Code.
Reference: Sections 200, 205, 255, 275, 7050, 7055 and 7056, Fish and Game Code.

Section 29.91, Title 14, CCR, is amended to read:

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

(a) Spiny Lobster Report Card Required. All individuals must have a Spiny Lobster Report Card in their possession while fishing for or taking spiny lobster. In the case of a person diving from a boat, the report card may be kept in the boat, or in the case of a person diving from the shore, the report card may be kept within 500 yards from the point of entry. Individuals must complete and return the card pursuant to regulations in this ~~Section~~section and in Section 1.74.

(b) Prior to beginning fishing activity, the cardholder must record the month, day, location, and gear code on the first available line on the report card. For purposes of this subsection "beginning fishing activity" is defined as placing a hoop net into the water or entering the ocean to take spiny lobster.

(c) When the cardholder moves to another location code, or finishes fishing for the day, ~~he or she~~ the cardholder must immediately record on the card the number of spiny lobster kept from that location.

(d) In the event an individual fills in all lines and returns a Spiny Lobster Report Card, an additional card may be purchased. See Section 1.74.

(e) The annual fee for the Spiny Lobster Report Card is specified in Section 701, Title 14, CCR.

Note: Authority cited: Sections 200, 205, 7075 and ~~265~~7078, Fish and Game Code. Reference: Sections 200, 205, ~~and 265~~, 7050, 7075, and 7078, Fish and Game Code.

Section 121, Title 14, CCR, is amended to read:

§ 121. ~~Lobster~~, Spiny Lobster. Open Season and Possession during Closed Season.

(a) Spiny lobsters (*Panulirus interruptus*) may be taken only between the first Wednesday in October and the first Wednesday after the 15th of March.

(b) No spiny lobsters may be sold or possessed during the closed season except as follows: ~~Lobsters~~ Spiny lobsters taken or imported during the open season which were cooked and frozen or frozen prior to the close of the open season, and spiny lobsters imported into California during the twenty-six (26) days following the close of the open season, provided such spiny lobsters were cooked and frozen or frozen prior to importation. During the closed season, after the twenty-six (26) day importation period, no spiny lobsters may be possessed on any boat, barge, or vessel.

Note: Authority cited: Sections ~~240 and 2365~~, 7075 and 7078, Fish and Game Code.

Reference: Sections ~~240, 2365~~, 7050, 7075, 7078 and 8254, Fish and Game Code.

Section 121.5, Title 14, CCR, is amended to read:

§ 121.5. ~~Lobster, Spiny~~ Spiny Lobster. Minimum Size and Verification.

(a) No spiny lobster less than 3 and 1/4 inches in length measured in a straight line from the rear edge of the eye socket to the rear edge of the body shell, both points to be on the midline of the back, may be taken, possessed, purchased, or sold.

(b) Every person taking spiny lobster shall carry a fixed caliper measuring device and shall measure any spiny lobster immediately on removal from the trap and if it is found to be undersize the spiny lobster shall be returned to the water immediately. ~~A trap shall be serviced prior to any additional trap being brought aboard a vessel. 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.~~

(c) All spiny lobsters (~~*Panulirus interruptus*~~) taken, possessed, transported or sold must be maintained in such a condition that their size can be determined as described in ~~Section~~ subsection 121.5(a) of these regulations until prepared for immediate consumption or sold to the ultimate consumer except as provided for in subsection (d) below.

(d) Spiny lobsters may be split along the midline of the carapace by persons licensed pursuant to Fish and Game Code Section 8034 (Fish Processors License) or Section 8037 (Commercial Fish Business License) provided both halves of each spiny lobster are kept together by banding or packaging until either displayed for purchase by the ultimate consumer or prepared for immediate consumption.

Note: Authority cited: Sections ~~240, 2365, 7075, 7078~~ and 8254, Fish and Game Code.

Reference: Sections ~~240, 2365, 7050, 7075, 7078~~ and 8254, Fish and Game Code.

Section 122, Title 14, CCR, is amended to read:

§ 122. Spiny Lobster Permits and Restricted Areas.

(a) Classes of Spiny Lobster Permits.

- (1) There is a transferable lobster operator permit, a non-transferable lobster operator permit and a lobster crewmember permit.
- (2) Under operator permits issued by the department, licensed commercial fishermen may take spiny lobsters for commercial purposes, but only with traps used pursuant to Fish and Game Code Section 9010, except that such traps shall only be used in Districts 18, 19, 20A, and that part of District 20 southerly of Santa Catalina Island between ~~South~~East Church Rock and China Point. No other method of take is authorized for the commercial harvest of spiny lobsters.
- (3) Any licensed commercial fisherman who does not possess a valid transferable or non-transferable lobster operator permit may purchase a lobster crewmember permit, authorizing him/her to accompany a lobster operator permit holder and to assist the lobster operator permit holder in the commercial take of spiny lobster.
- (4) Exemption from Tidal Invertebrate Permit. A lobster operator permit holder or a lobster crewmember permit holder operating under the provisions of a lobster operator permit is not required to possess a Tidal Invertebrate Permit, but is subject to Section 123 of these regulations.

[...No proposed changes to subsections (b) through (h)]

Note: Authority cited: 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, ~~9002.5~~, 9005, 9006 and 9010, Fish and Game Code.

Section 122.1, Title 14, CCR, is amended to read:

§ 122.1. Spiny Lobster Buoys and Trap Tags.

(a) All spiny lobster traps and receivers impounding spiny lobsters shall be individually buoyed. The buoys must be on the surface of the water, except after the first Tuesday in October when buoys may be submerged by means of metallic timing devices with a timed delay (commonly called "pop-ups") that does not exceed the trap service interval requirement as specified in subsection 122.2(d) of these regulations.

(b) ~~Each~~ Any buoy ~~marking any that marks a spiny~~ lobster trap shall comply with marking requirements set forth in Section 180.5 of these regulations. Any buoy that marks a receiver that contains spiny lobster shall be clearly and distinctly marked with its owner's commercial fishing license identification number. The numbers shall be at least one and one-half (1.5) inches in height, drawn with a line no less than 1/4 (0.25) inch thick, in a color that contrasts with the buoy, and maintained so that they are visible and legible.

(c) Deployed lobster traps and those possessed by a lobster operator permit holder aboard a vessel shall have a valid department-issued trap tag directly attached to the trap. If the information on the trap tag is illegible or incorrect or if the trap tag is missing from the trap for any reason, the trap shall be considered not in compliance, and shall not be used to take spiny lobster for commercial purposes.

(1) Lobster trap tags. A lobster operator permit holder shall be issued 300 trap tags for use during that season for each valid lobster operator permit in possession.

(2) Replacement procedures for catastrophic loss of trap tags.

(A) A lobster operator permit holder shall only be eligible to receive replacement trap tags for trap tags lost due to catastrophic loss.

(B) Catastrophic trap tag loss is defined as the cumulative loss of 75 or more trap tags for each valid lobster operator permit due to events beyond the lobster operator permit holder's control, such as weather, force ~~majeure~~ majeure, and acts of God.

(C) The lobster operator permit holder shall submit to the department's License and Revenue Branch the affidavit-Lobster Operator Permit Catastrophic Lost Trap Tag Affidavit, DFW 1701 (New 2/2016), incorporated by reference herein, signed under penalty of perjury by the lobster operator permit holder and the nonrefundable fee for each replacement tag as specified in Section 705 of these regulations.

(D) An affidavit for trap tag replacement due to catastrophic loss, with a description of the factual circumstances consistent with subsection (B) above, shall be approved by the department prior to any replacement trap tags being issued.

(E) Any trap tag reported as lost and subsequently recovered during the season is invalid and shall be immediately returned to the department's License and Revenue Branch.

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

Section 122.2, Title 14, CCR, is amended to read:

§ 122.2. Pulling Spiny Lobster Traps.

[...No changes to subsections (a) through (e)]

(f) By April ~~15~~30 of each year, every lobster operator permit holder shall submit ~~a trap loss affidavit, as specified in Section 705, an End of Season Spiny Lobster Trap Loss Reporting Affidavit, DFW 1020 (Rev. 10/10/22), incorporated by reference herein,~~ for each permit ~~he/she holds they hold~~ to the address listed on the affidavit.

- (1) If a permit is transferred during the season, only the lobster operator permit holder who is in possession of that permit at the end of the season is required to submit the affidavit.
- (2) All trap tags shall be retained by each lobster operator permit holder until the beginning of the next lobster season.

. . [No change to subsection (g)]

(h) No lobster operator permit holder shall disturb, possess, use, control, or operate any lobster trap with a trap tag bearing a permit number other than their ~~his/her~~ own nor any receivers bearing a commercial fishing license identification number other than their ~~his/her~~ own except:

- (1) To retrieve from the ocean and transport to shore lobster trap(s) of another lobster operator permit holder that were lost, damaged, abandoned or otherwise derelict, provided that:
 - (A) The permit holder making the retrieval has in possession written permission from the permit holder who owns the traps. The permission shall contain the commercial fishing license identification number of the permit holder who owns the trap.
 - ~~(A)-(B)~~ No more than 6 derelict lobster traps may be retrieved per fishing trip.
 - ~~(B) Lobsters~~ (C) Spiny lobsters in any retrieved lobster trap(s) shall not be retained and shall be returned to the ocean waters immediately.
 - ~~(C)-(D)~~ Immediately upon retrieval of any lobster trap(s), the lobster operator permit holder retrieving the traps shall document in the retrieving vessel's log the date and time of trap retrieval, number of retrieved lobster traps, location of retrieval, and retrieved trap tag information.
 - ~~(D)-(E)~~ Any retrieved lobster trap(s) shall be transported to shore during the same fishing trip that retrieval took place.
- (2) Under a waiver granted by the department, pulling, servicing, or transporting receivers or more than 6 lobster traps by another lobster operator permit holder is allowed if:
 - (A) The lobster operator permit holder is unable to pull, service or transport ~~his/her~~ their traps or receivers due to circumstances beyond the control of the permit holder.

(B) A request for the waiver has been submitted in writing to the department's License and Revenue Branch. The waiver shall include:

1. Name and permit number of the lobster operator permit holder requesting the waiver;
2. Name and permit number of the lobster operator permit holder pulling, servicing or transporting the traps and receivers;
3. Proposed time period and location to conduct operations; and
4. Lobster trap tag numbers or number of traps and receivers to be pulled, serviced or transported.

(C) The department may request other related information prior to granting or denying the waiver.

(D) The waiver may include conditions such as time period to conduct operations, landing prohibitions or any other criteria the department deems necessary.

(E) A copy of the waiver approved by the department shall be in the possession of the lobster operator permit holder when pulling, servicing, or transporting the traps and receivers.

(F) The lobster operator permit holder pulling, servicing, or transporting the traps and receivers may retain spiny lobsters caught in the traps or contained in the receivers unless otherwise specified as a condition of the waiver.

(3) From 15 days after the close of the commercial lobster season through September 15, an unlimited number of lobster traps may be retrieved by a lobster operator permit holder or a department designee and transported to shore.

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

Section 705, Title 14, CCR, is amended to read:

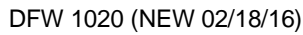
§ 705. Commercial Fishing Applications, Permits, Tags and Fees.

[...No changes to subsections (a) through (b)]

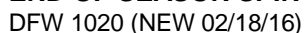
(c) Tags and Miscellaneous	Fees (US\$)
(1) Commercial Surfperch Tags	10.00 (Per Order)
(2) Importation and Sale of Kelp Bass, Sand Bass, and Spotted Bass Tags	10.00 (Per Order)
(3) Pismo Clams Imported into California	10.00 (Processing Fee Per Entry)
(4) Sea Urchin Diving Permit Drawing	4.38
(5) Lobster Operator Permit Catastrophic Lost Trap Tag Affidavit, DFW 1701 (New 2/2016), incorporated by reference herein.	
(6) (5) Lobster Operator Permit Catastrophic Lost Trap Tag Fee per tag.	1.25
(7) End of Season Spiny Lobster Trap Loss Reporting Affidavit, DFW 1020 (New 02/18/16), incorporated by reference herein.	
(8) (6) Lost or Abandoned Department Trap Fee (per trap)	\$408.50

... [No changes to subsection (d)]

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



SIGNATURE OF PERMIT HOLDER	DATE
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~~Circle trap tag numbers of each reported lost trap associated with the above permit. For lost traps marked with replacement tags acquired through a catastrophic loss claim, please provide the tag number in the blank boxes at the bottom of this affidavit.~~

1	11	21	31	41	51	61	71	81	91
2	12	22	32	42	52	62	72	82	92
3	13	23	33	43	53	63	73	83	93
4	14	24	34	44	54	64	74	84	94
5	15	25	35	45	55	65	75	85	95
6	16	26	36	46	56	66	76	86	96
7	17	27	37	47	57	67	77	87	97
8	18	28	38	48	58	68	78	88	98
9	19	29	39	49	59	69	79	89	99
10	20	30	40	50	60	70	80	90	100

101	111	121	131	141	151	161	171	181	191
102	112	122	132	142	152	162	172	182	192
103	113	123	133	143	153	163	173	183	193
104	114	124	134	144	154	164	174	184	194
105	115	125	135	145	155	165	175	185	195
106	116	126	136	146	156	166	176	186	196
107	117	127	137	147	157	167	177	187	197
108	118	128	138	148	158	168	178	188	198
109	119	129	139	149	159	169	179	189	199
110	120	130	140	150	160	170	180	190	200

201	211	221	231	241	251	261	271	281	291
202	212	222	232	242	252	262	272	282	292
203	213	223	233	243	253	263	273	283	293
204	214	224	234	244	254	264	274	284	294
205	215	225	235	245	255	265	275	285	295
206	216	226	236	246	256	266	276	286	296
207	217	227	237	247	257	267	277	287	297
208	218	228	238	248	258	268	278	288	298
209	219	229	239	249	259	269	279	289	299
210	220	230	240	250	260	270	280	290	300

Replacement tag number

**END OF SEASON SPINY LOBSTER TRAP LOSS REPORTING AFFIDAVIT**

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INSTRUCTIONS: At the end of each commercial fishing season, fill out the required information and submit the completed affidavit by **April 30th** to the California Department of Fish and Wildlife, 3883 Ruffin Rd., San Diego, CA 92123 or email to Lobster@wildlife.ca.gov. A separate signed affidavit must be submitted for each lobster operator permit that a commercial fisherman possesses.

TYPE OR PRINT CLEARLY.

COMMERCIAL FISHING ID #		LOBSTER OPERATOR PERMIT #		GO ID NUMBER	
FIRST NAME		M.I.	LAST NAME		
MAILING ADDRESS			CITY	STATE	ZIP CODE
PHYSICAL ADDRESS (DO NOT USE PO BOX)			CITY	STATE	ZIP CODE
DAY TELEPHONE			EMAIL ADDRESS		

COMPLETE THE FOLLOWING:

Number of total traps lost or unrecovered

Total number of tags used

Check the box if you did not fish this season ☐Check the box if you received replacement tags via a "Catastrophic Loss Affidavit" ☐

Describe the factual circumstance surrounding the loss of traps per fishing block (last known) and, if possible, the approximate date of loss. Additional rows are provided on page 3 of this form if needed.

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: _____
			<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: _____
			<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: _____
			<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: _____

I hereby certify under penalty of perjury, that said traps and associated trap tags have been lost. I understand that falsely reporting the number of traps lost is a violation of the law, pursuant to Fish and Game Code, Section 1054.

SIGNATURE OF PERMIT HOLDER

DATE

X

**END OF SEASON SPINY LOBSTER TRAP LOSS REPORTING AFFIDAVIT**

NAME:	COMMERCIAL FISHING ID #	LOBSTER OPERATOR PERMIT #
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Circle trap tag numbers of each reported lost trap associated with the above permit. For lost traps marked with replacement tags acquired through a catastrophic loss claim, please provide the tag number in the blank boxes at the bottom of this affidavit.

1	11	21	31	41	51	61	71	81	91
2	12	22	32	42	52	62	72	82	92
3	13	23	33	43	53	63	73	83	93
4	14	24	34	44	54	64	74	84	94
5	15	25	35	45	55	65	75	85	95
6	16	26	36	46	56	66	76	86	96
7	17	27	37	47	57	67	77	87	97
8	18	28	38	48	58	68	78	88	98
9	19	29	39	49	59	69	79	89	99
10	20	30	40	50	60	70	80	90	100

101	111	121	131	141	151	161	171	181	191
102	112	122	132	142	152	162	172	182	192
103	113	123	133	143	153	163	173	183	193
104	114	124	134	144	154	164	174	184	194
105	115	125	135	145	155	165	175	185	195
106	116	126	136	146	156	166	176	186	196
107	117	127	137	147	157	167	177	187	197
108	118	128	138	148	158	168	178	188	198
109	119	129	139	149	159	169	179	189	199
110	120	130	140	150	160	170	180	190	200

201	211	221	231	241	251	261	271	281	291
202	212	222	232	242	252	262	272	282	292
203	213	223	233	243	253	263	273	283	293
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205	215	225	235	245	255	265	275	285	295
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207	217	227	237	247	257	267	277	287	297
208	218	228	238	248	258	268	278	288	298
209	219	229	239	249	259	269	279	289	299
210	220	230	240	250	260	270	280	290	300

Replacement tag number

Privacy Notice

Pursuant to California Code of Regulations, Title 14, Section 122.2, the Department of Fish and Wildlife (CDFW) is authorized to collect information from commercial spiny lobster operators to maintain a record of trap loss. All information requested on the affidavit is mandatory unless otherwise indicated. Failure to provide all of the requested information may result in enforcement action pursuant to California Fish and Game Code (FGC), Sections 12000 *et seq.* Pursuant to FGC, Section 391, CDFW may exchange or release to appropriate federal, state, or local agency or agencies in other states, for purposes of law enforcement, any information collected or maintained by CDFW. Questions, comments or complaints regarding this privacy policy or requests for personal information access, correction, or deletion should be sent to: privacy@wildlife.ca.gov. The CDFW Privacy Officer is responsible for the system of records and is located at 715 P Street, Sacramento, CA 95814 [no mail is accepted]; mail to: PO Box 944209, Sacramento, CA 94244-2090; the telephone number is (916) 445-0411. You may obtain a copy of your license records maintained by CDFW by contacting the custodian of records at the CDFW's License and Revenue Branch, PO Box 944209, Sacramento, CA 94244-2090, or email LRB@wildlife.ca.gov. All requests for copies of these records must be submitted in writing and include the requester's name, address, and telephone number.



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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: _____
			<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: _____
			<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: _____
			<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: _____
			<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: _____
			<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: _____
			<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: _____
			<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: _____
			<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: _____
			<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: _____
			<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: _____
			<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: _____

STAFF SUMMARY FOR DECEMBER 14-15, 2022*For background purposes only***4. CALIFORNIA SPINY LOBSTER AND RECREATIONAL HOOP NETS****Today's Item**Information ☐Action ☒

Consider authorizing publication of notice of intent to amend regulations for (a) commercial and recreational take of California spiny lobster, and (b) recreational hoop net requirements for take of crustaceans.

Summary of Previous/Future Actions

- | | |
|---|--|
| • FGC adopted California spiny lobster fishery management plan (lobster FMP) | Jun 22-23, 2016; Bakersfield |
| • MRC discussed proposed lobster regulation changes and recommendation | Jul 14, 2022; MRC, Santa Rosa |
| • DFW requested that FGC add statewide hoop net changes to lobster rulemaking | Aug 17, 2022; Loleta |
| • Adoption of emergency hoop net regulations | Oct 12-13, 2022; Kings Beach |
| • Today's notice hearing for regular rulemaking for lobster and hoop net regulations | Dec 14-15, 2022; San Diego |
| • Discussion hearing for regular rulemaking for lobster and hoop net regulations | Feb 8-9, 2023; Sacramento |
| • Adoption hearing for regular rulemaking for lobster and hoop net regulations | Apr 19-20, 2023; Fresno/Bakersfield area |
| • Potential regular rulemaking effective date | Sep 1, 2023 (estimate) |

Background

The recreational and commercial lobster fisheries are managed under the authority of the lobster FMP adopted by FGC in 2016 and implementing regulations adopted the same year.

Existing, implementing regulations for *recreational take of spiny lobster*, as well as 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 (5 per person south of Pt. Arguello, 10 per vessel south of Pt. Arguello, and 2 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;

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- 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;
- and 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.

DFW requested FGC fine-tune the existing regulations controlling the recreational and commercial spiny lobster fisheries. The proposed changes would help improve the regulations governing the fisheries, last amended by FGC in 2016, primarily by improving enforcement and reducing the public's regulatory burden. See exhibits 1-3.

In addition, the changes would amend rules on the recreational use of hoop nets statewide for take of crustaceans (including spiny lobster), most of which were adopted through an emergency rulemaking at the Oct 2022 FGC meeting and added by FGC to the scope of the lobster rulemaking (this item). The proposed changes to rules governing recreational hoop net use aim to reduce the risk of entanglement for protected marine wildlife by ensuring that hoop nets are not modified to function like traps when traps are otherwise prohibited, and to ensure they are serviced at regular intervals.

Proposed Recreational Changes

- Change the start of the recreational season for spiny lobster from 6:00 a.m. of the Saturday preceding the first Wednesday in Oct to 6:00 p.m. of the Friday preceding that first Wednesday.
- 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.
- 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.
- 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.
- Refine the specifications for the allowed hoop net types A and B in line with the emergency regulation.
- Reorganize the requirement that the owner or operator of a hoop net shall raise the hoop net to the surface and inspect its contents at intervals not to exceed 2 hours.
- Specify the number of hoop nets that may be deployed in different parts of the state.

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- Clarify hoop net buoy marking requirements and establish marking requirement for hoop nets deployed by a vessel in California waters.

Proposed Commercial Changes

- Clarify that spiny lobsters must be measured immediately when any trap is raised to the surface.
- Change the boundary where commercial fishing may occur on the southern Catalina Island coast to the more identifiable landmark Church Rock.
- Require lobster receiver buoys to be marked with the identification of their owners.
- 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 must 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.
- Extend the deadline of the End of Season Spiny Lobster Trap Loss Reporting Affidavit (DFW 1020) from Apr 15 to Apr 30; reformat the trap loss affidavit in Form DFW 1020; insert a privacy notice in accordance with California Civil Code subdivision (b) of Section 1798.17; and move the incorporation by reference of Form DFW 1020 from Section 705 to Section 122.
- Move the incorporation by reference of Form DFW 1701 (Lobster Operator Permit Catastrophic Lost Trap Tag Affidavit) from Section 705 to Section 122.1.

Significant Public Comments

1. At the Oct 2022 meeting, FGC received testimony (Exhibit 6) from several commercial passenger fishing vessel operators opposed to the emergency hoop net regulation changes that specify allowable hoop net designs, including pictures of the new hoop net design that are prohibited, as they provide for more efficient capture and take (Exhibit 7). The regular rulemaking includes the changes adopted in the emergency hoop net regulations.
2. After the Oct 2022 meeting, FGC received correspondence requesting inclusion of alternative methods, such as zip ties, to mark hoop net buoys (Exhibit 8) and inquiring about hoop net weight limits (Exhibit 9).

Recommendation

FGC staff: Authorize publication of a notice of intent to amend regulations as recommended by DFW.

Marine Resources Committee: Authorize publication of a notice of intent to amend lobster regulations as recommended by DFW.

DFW: Authorize publication of a notice of intent to amend regulations as detailed in the draft initial statement of reasons (ISOR).

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Exhibits

1. DFW memo, received Dec 1, 2022
2. Draft ISOR
3. Proposed regulatory language
4. Draft economic and fiscal impact statement (STD. 399)
5. DFW presentation
6. Public testimony excerpted from Zoom transcript of Oct 2022 meeting, item 16
7. Handout from James Smith, Oct 2022 meeting, item 16
8. Letter from Wayne Kotow, Coastal Conservation Association California, received Oct 14, 2022
9. Email message from "SE", received Oct 14, 2022

Motion

Moved by _____ and seconded by _____ that the Commission authorizes publication of a notice of its intent to amend Section 29.80, et al., related to commercial and recreational take of California spiny lobster and recreational hoop net requirements for take of saltwater crustaceans, as discussed today.