

STAFF SUMMARY FOR FEBRUARY 8-9, 2023 FGC

22. RECREATIONAL HOOP NET REGULATIONS (CONSENT)**Today's Item**Information ☐Action ☒

Consider adopting a 90-day extension of emergency regulations to amend and clarify hoop net regulations in order to minimize entanglement risk of federally-protected species and to expand the current identification requirement in effect south of Pt. Arguello, Santa Barbara County, to apply statewide.

Summary of Previous/Future Actions

- Adopted changes to recreational crab fishing regulations to provide whale and turtle protections in trap fisheries Dec 9-10, 2020
- Department Marine Region report of increased hoop net use and adaptations in the recreational fishery Aug 17, 2022
- Adoption hearing for *emergency* hoop net regulation changes for the recreational fishery Oct 12-13, 2022
- Notice hearing for *regular* rulemaking for lobster and hoop net regulation changes Dec 14-15, 2022
- **Today's adoption hearing for a 90-day extension of *emergency* hoop net regulation changes** **Feb 8-9, 2023**
- Discussion hearing for *regular* rulemaking for lobster and hoop net regulation changes 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* hoop net regulation changes Jun 14-15, 2023
- Potential effective date for *regular* rulemaking for lobster and hoop net regulation changes Sep 1, 2023 (estimated)

Background

During the last eight years, the National Marine Fisheries Service has documented increased levels of entanglement in California fishing gear involving federally listed species that are protected by the Endangered Species Act and the Marine Mammal Protection Act, such as humpback whales and blue whales. Entanglements can affect an animal's ability to swim, forage for food, or reproduce, and can even lead to the loss of fins or flukes or death in severe cases. The state has a zero-entanglement mortality goal and has made it a priority to reduce or eliminate marine life entanglements from all fishing gear types, including crab traps, to minimize risks for federally protected species.

At the start of the 2021-22 recreational Dungeness crab fishing season, high marine life concentrations resulted in a statewide trap prohibition. In response, there was a dramatic

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increase in another gear type used in recreational fishing to target Dungeness crab — hoop nets — which is still legal due to what is normally a minimal entanglement risk for this gear type. However, hoop net design changes were being made such that a hoop net would function like a trap, contrary to the intent of the crab trap prohibition during periods of elevated entanglement risk. Increased hoop net use in offshore waters overlapped with foraging whales present on the fishing grounds.

At its October 2022 meeting, the Commission adopted emergency regulations to amend and clarify hoop net regulations to minimize entanglement risk of federally protected species. Immediate action through an emergency rulemaking was necessary to ensure the regulations would be in effect in time for the 2022-23 fishing season. The emergency rule clarified that the two-hour service interval for hoop nets is applicable statewide, specified that hoop nets could not be constructed with wire mesh, and further specified that Type B hoop nets must be constructed with straight, rigid arms, only two rigid rings, and no additional openings below the top ring. Finally, the gear identification requirements of hoop nets were also updated to apply statewide.

The emergency regulations will expire on May 2, 2023 unless an extension is approved. For the reasons identified in Exhibit 2, the Department requests that the Commission readopt the emergency regulations for an additional 90-day period to maintain them for the entire recreational Dungeness crab season that ends July 30, 2023. The Department has indicated it plans to request a second 90-day extension (exhibits 1 and 2).

At its December 2022 meeting, the Commission authorized staff to publish a notice of intent to adopt regulations in a standard rulemaking that includes the emergency hoop net regulation changes as well as proposed changes to the commercial and recreational spiny lobster fisheries (Agenda Item 24 for today).

Significant Public Comments (N/A)

Recommendation

FGC staff: Under a motion to adopt the consent calendar, determine, pursuant to Section 399 of the California Fish and Game Code, that adopting these regulation changes is necessary for the immediate conservation, preservation, and protection of birds, mammals, fish, amphibians, or reptiles, including, but not limited to, their nests or eggs. Further determine, pursuant to Section 11346.1 of the California Government Code, that an emergency situation exists and that the proposed regulation changes are necessary to address the emergency. And, adopt the emergency regulations amending subsection (b) of Section 29.80, related to the use of hoop nets for the recreational take of lobster and crab, as recommended by the Department for an additional 90 days.

DFW: Continue the emergency action with the first of two 90-day readoption actions to safeguard federally protected species from marine life entanglement risk.

Exhibits

1. [Department memo, received January 19, 2023](#)

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2. [Draft emergency statement and proposed regulatory language, dated January 17, 2023](#)
3. [Draft economic and fiscal impact statement \(STD. 399\)](#)
4. [Staff summary from October 12-13, 2022 Commission meeting, Item 16 \(for background purposes only\)](#)

Motion

Moved by _____ and seconded by _____ that the Commission adopts the staff recommendation for items 21 and 22 on the consent calendar.

Memorandum

Date: January 13, 2023

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

From: Charlton H. Bonham
Director

Subject: **Agenda Item for the February 8-9, 2023, Fish and Game Commission Meeting: Readoption of Emergency Hoop Net Regulations, Subsection 29.80(b), Title 14, California Code of Regulations (CCR)**

On October 13, 2022, the Fish and Game Commission (Commission) took emergency action to amend and clarify hoop net regulations to minimize entanglement risk of federally protected species.

The Department of Fish and Wildlife (Department) requests the Commission take action at its February 8-9, 2023, meeting to readopt the emergency regulations to maintain these regulations for the entire recreational Dungeness crab season that ends July 30, 2023. If the emergency regulations are not readopted, they will expire May 2, 2023.

Transmittal of the attached updated Finding of Emergency and Statement of Proposed Emergency Regulatory Action will allow the Commission to consider readopting the emergency rulemaking at its February 8-9, 2023, meeting. The readoption would be the first of two 90-day extensions. At its December 2022 meeting, the Commission authorized publication of a notice of its intent to adopt regulations in a standard rulemaking that includes these hoop net changes as well as changes to the spiny lobster fishery; discussion and adoption hearings for the standard rulemaking are scheduled for the Commission's February and April 2023 meetings, respectively.

If you have any questions or need additional information, please contact Dr. Craig Shuman, Marine Regional Manager via email at R7RegionalMgr@wildlife.ca.gov. The Department point of contact for this emergency rulemaking is Senior Environmental Scientist, Christy Juhasz.

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Fish and Game Commission
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CALIFORNIA FISH AND GAME COMMISSION
FINDING OF EMERGENCY AND
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

Readoption of Emergency Action to
Amend Subsection 29.80(b)
Title 14, California Code of Regulations (CCR)
Re: Hoop Nets

Date of Statement: January 17, 2023

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

I. Background

At the August 17, 2022 California Fish and Game Commission (Commission) meeting, the California Department of Fish and Wildlife (Department) notified the Commission that there has been a dramatic increase in the use of hoop nets in the recreational crab fishery and that gear manufacturers are developing new hoop net designs that follow current hoop net Type B regulations but function like traps. The Commission is a five-member body of governor-appointed officials that are subject to the Bagley-Keene Open Meeting Act (sections 11125 and 11125.7(a), California Government Code) that requires the Commission only take action on subjects at a public meeting where notice of the subject has been given. As the Commission was not previously aware of this issue, no agenda item in August allowed the Commission to consider any rulemaking action. The next regularly scheduled meeting for the Commission was October 12-13, 2022. When the Commission undertakes a regular rulemaking, the Commission must consider sport fishing regulations at three separate public meetings (Section 255, California Fish and Game Code). Compliance with the regular rulemaking process and the three-meeting process required by the Fish and Game Code, and the Commission's existing meeting schedule, would not allow the Commission to adopt a regulation sooner than February of 2023. Even if the Commission were able to schedule additional meetings not already contemplated, a regular rulemaking would not be adopted until well after the scheduled opening of the recreational season. Therefore, the Commission did not have sufficient time to complete a regular rulemaking with full Office of Administrative Law review prior to the opening of the recreational Dungeness crab season.

II. Emergency Regulations in Effect to Date

At its October 2022 meeting, the Commission approved an emergency rulemaking amending subsection 29.80(b) that became effective October 31, 2022, prior to the start of the 2022-2023 recreational Dungeness crab season. The emergency rulemaking amended and clarified hoop net regulations to minimize entanglement risk of federally protected species: humpback whales, blue whales, and Pacific leatherback sea turtles. The emergency rule clarified that the two-hour service interval is applicable statewide, specified that hoop nets could not be constructed with wire mesh, and further specified that Type B hoop nets must be constructed with straight rigid arms, only two rigid rings, and no additional openings below the top ring. Finally, the gear identification requirements of hoop nets were also updated to apply statewide.

III. Request for Approval of Readoption of Emergency Regulations

The current emergency rule, subsection 29.80(b), will expire on May 2, 2023 unless it is readopted for an additional 90 days.

The emergency rule needs to be readopted to keep current hoop net regulations in place for the entire recreational Dungeness crab season that ends July 30, 2023. A regular rulemaking (Certificate of Compliance) to permanently adopt these hoop net changes as well as changes to the California spiny lobster fishery is underway. At its December 14-15, 2022 meeting, the Commission authorized publication of a notice of the regular rulemaking, which is expected to be adopted by the Commission in April 2023 and to be effective September 1, 2023.

In order to obtain the necessary information to inform that rulemaking and protect resources while it is promulgated, the current emergency rule needs to be extended. Additionally, a second readoption of the emergency regulations will be necessary to keep the emergency regulations in place until the regular rulemaking goes into effect.

IV. Statement of Facts Constituting the Need for Readoption of Regulatory Action

Prior Commission Actions

On October 13, 2022, the Commission adopted the following emergency regulations amending subsection 29.80(b) related to the recreational use of hoop nets as a method of take for crab and lobster.

Emergency Regulations

The emergency rule amended subsection 29.80(b) by creating new subsections (1) through (6) to organize hoop net requirements by the distinct topics that specify the use and design of this gear type for facilitating compliance and enforcement of these regulations to minimize entanglement risk.

The original regulatory text that was under subsection (b) was divided into separate subsections (1), (2) and (5) and was otherwise unchanged. Placing these statements in separate subsections removed the reference of the geographic area where hoop net limits occur that preceded the service interval requirement, thereby specifying the service interval of two hours is applicable to hoop nets used statewide.

The original text in subsection (2) was renumbered as subsection (3) and amended to state that it is unlawful to abandon or leave out any hoop net beyond the service interval period and that these hoop nets can be seized by law enforcement.

The original subsection (1) was renumbered as subsection (4) and contains the topic of “Hoop Net Defined.” For both hoop net types, the emergency regulatory language requires “non-metallic” soft mesh. Type A hoop nets are intended to be collapsible, and a metallic mesh structure could impede this design. In addition, emergency regulatory text regarding type B hoop nets restricts designs from “two to three rigid rings” to allow “only two rigid rings” reflecting that there is a bottom ring and a top ring. Other amendments to this subsection reflect the new two-ring design. Metallic mesh and allowing the Type B design to have three rings makes both hoop net types heavier, posing a greater risk of severe injuries from entanglement due to the additional weight of the hoop net. Entanglements can affect the animal's ability to swim, forage for food, reproduce and can even lead to loss of fins or flukes in severe cases. The emergency regulations also require that

Type B hoop nets be constructed using rigid “straight” support arms and prohibit any additional “entrances below the top ring” since the intent of the device is that crabs may only enter and exit from this opening of the net. These hoop net design changes prevent a hoop net from functioning like a trap, which is contrary to the intent of the crab trap prohibition (subsection 29.80 (c)), during periods of elevated entanglement risk.

Subsection (5) was organized under the new topic title of “Limits” and the original regulatory text from the second sentence of subsection (b) was moved here unaltered. An additional statement was added to clarify that hoop net limits do not apply north of Point Arguello, Santa Barbara County, to the California-Oregon border.

The original subsection (3) was renumbered as subsection (6) and organized under the new topic title of “Gear Identification Requirements.” The original requirement for hoop nets used south of Point Arguello to be marked with a surface buoy, except those deployed by persons on shore or manmade structures connected to shore, was expanded to apply statewide. The second sentence of the original subsection (3) regarding surface buoy marking requirements was moved to new subsection (6)(C) and amended to reflect its new location. The emergency rulemaking moved this subsection to follow the buoy marking requirements for commercial passenger fishing vessels under subsection (6)(A) and licensed guides under subsection (6)(B). A statement was added to allow only one operator’s GO ID be used to mark the buoy to simplify identification of hoop net gear for the needs of enforcement and in the event of entanglements.

Existence of an Emergency and Need for Immediate Action

The Commission considered the following factors in determining that an emergency does exist at this time:

The magnitude of potential harm:

Increased hoop net effort could result in elevated marine life entanglement risk of the federally protected species: humpback whales, blue whales, and Pacific leatherback sea turtles during the 2022-2023 recreational Dungeness crab season, November 5, 2022 through July 30, 2023. The coastal waters of Monterey Bay, and Santa Cruz, San Mateo, Marin and Sonoma counties are of particular concern because of the large numbers of humpback whales that forage in those areas.

The existence of a crisis situation:

The state has a zero-entanglement mortality goal and has made it a priority to reduce and/or eliminate marine life entanglements caused by all fishing gear types. In addition, entanglements from California fishing gear have involved federally listed species that are protected by the Endangered Species Act and the Marine Mammal Protection Act.

The immediacy of the need:

High marine life concentrations at the start of the 2022-2023 recreational Dungeness crab fishing season resulted in a statewide trap prohibition. This increased the use of hoop nets in offshore waters which overlapped with foraging whales that were present on the fishing grounds. The prohibition was lifted north of the Sonoma/Mendocino county line on November 28, 2022 and lasted a period of three weeks, while the prohibition remained in effect for 10 weeks south of the Sonoma/Mendocino county line until January 14, 2023. Emergency

regulations will maintain the low entanglement risk of hoop nets by ensuring that they will be serviced every two hours and that design modifications will prevent the device from functioning as a crab trap that would otherwise incentivize longer soak periods. In the rare instance there is an entanglement, the proposed design specifications of both hoop net types will retain the reduced weight of this gear type, thereby posing less harm to an entangled whale or sea turtle. In addition, gear marking of hoop nets used north of Point Arguello, Santa Barbara County, will aid in the identification of this gear type to enforce these requirements and identify hoop nets involved in entanglements.

Whether the anticipation of harm has a basis firmer than simple speculation:

The National Oceanic and Atmospheric Administration maintains an entanglement record, detailing fishery interactions with protected mammals and sea turtles dating back to the early 1980s. Based on the best available science, entanglement risk increases with the co-occurrence of protected species and vertical lines. The emergency rulemaking will keep in place the current emergency hoop net regulations to minimize entanglement risk of federally protected humpback whales, blue whales, and Pacific leatherback sea turtles.

V. Readoption Criteria

Same as or Substantially Equivalent

Pursuant to Government Code subdivision 11346.1(h), a readoption may be approved only if the text is “the same as or substantially equivalent to an emergency regulation previously adopted by that agency.” The language proposed for this rulemaking is the same as the language of the original emergency regulation.

Substantial Progress

Government Code subdivision 11346.1(h) specifies “Readoption shall be permitted only if the agency has made substantial progress and proceeded with diligence to comply with subdivision (e)” [sections 11346.2 through 11347.3, inclusive].

A regular rulemaking is currently underway and was approved by the Commission for public notice December 14, 2022.

Proposed Action by the Commission

The Commission proposes the readoption of amendments to subsection 29.80(b) that is the same as previously effective.

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 determinations relative to the required statutory categories have been made:

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

None.

(b) Nondiscretionary Costs/Savings to Local Agencies: None.

(c) Programs Mandated on Local Agencies or School Districts: None.

(d) 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.

(e) Effect on Housing Costs: None.

VII. Technical, Theoretical, and/or Empirical Studies, Reports, or Documents Relied Upon:

[California Department of Fish and Wildlife \(Department\) Declaration Lifting the Commercial Gear Restriction and Temporary Crab Trap Prohibition for the Recreational Crab Fishery \(January 11, 2023\)](#)

[California Department of Fish and Wildlife \(Department\) Declaration of Fishing Season Delay for the Commercial Dungeness Crab Fishery and Temporary Crab Trap Prohibition for the Recreational Crab Fishery Due to Risk of Marine Life Entanglement \(November 21, 2022\)](#)

[California Department of Fish and Wildlife \(Department\) Declaration of Fishing Season Delay for the Commercial Dungeness Crab Fishery and Temporary Crab Trap Prohibition for the Recreational Crab Fishery Due to Risk of Marine Life Entanglement \(October 28, 2022\)](#)

[California Department of Fish and Wildlife \(Department\) Declaration of Fishing Season Delay for the Commercial Dungeness Crab Fishery and Temporary Crab Trap Prohibition for the Recreational Crab Fishery Due to Risk of Marine Life Entanglement \(November 1, 2021\)](#)

[California Department of Fish and Wildlife Final Assessment of Marine Life Entanglement Risk and Management Action Recommendation \(October 29, 2021\)](#)

[2021-22 Risk Assessment: Available Data, California Department of Fish and Wildlife \(October 29, 2021\)](#)

[Strategic Plan to Protect California's Coast and Ocean 2020-2025 \(February 26, 2020\)](#)

VIII. Authority and Reference

Authority cited: Sections 200, 205, 265, 275, 399, 7075 and 7078 Fish and Game Code.

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

IX. Fish and Game Code Section 399 Finding

Continued emergency action is necessary now to safeguard federally protected species and minimize risk as much as feasible for the entire recreational Dungeness crab season that ends July 30, 2023.

Pursuant to Section 399 of the Fish and Game Code, the Commission finds that adopting this regulation is necessary for the immediate conservation, preservation, or protection of birds, mammals, fish, amphibians, or reptiles, including but not limited to their nests or eggs.

Informative Digest (Policy Statement Overview)

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

Current regulations in subsection 29.80(b) specify that hoop nets may be used to take spiny lobster and all species of crab, define two authorized types of hoop nets, require regular servicing of hoop nets, limit the number of hoop nets used south of Point Arguello, Santa Barbara County, and require marking of hoop net surface buoys. Current regulations in subsection 29.80(c) specify regulations for the use of crab traps, including provisions that became effective November 1, 2021 which allow the Director of the California Department of Fish and Wildlife (Department) to prohibit the deployment and use of crab traps to protect humpback whales, blue whales and/or Pacific leatherback sea turtles when concentrations of these species meet specified numerical triggers.

On October 13, 2022, the California Fish and Game Commission (Commission) approved an emergency rulemaking, amending subsection 29.80(b) that became effective October 31, 2022, prior to the start of the 2022-2023 recreational Dungeness crab season. The October 2022 emergency action addressed the following concerns:

- Clarify hoop net service interval requirement of two hours is statewide
- Add that “non-metallic” soft mesh be used in hoop net types A and 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
- 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

The Department recommends that the Commission continue the emergency action with the first of two 90-day readoption actions to safeguard federally protected species from marine life entanglement risk.

A dramatic increase in hoop net fishing effort in the Dungeness crab (*Metacarcinus magister*) recreational fishery during times of elevated marine life entanglement risk created the need for the emergency rulemaking to amend hoop net regulations before the start of the 2022-2023 recreational Dungeness crab season. This increase in hoop net fishing effort was a result of crab trap prohibitions declared pursuant to subsection 29.80(c). The readoption of the emergency regulations will continue to minimize entanglement risk of the federally protected species: humpback whales, blue whales, and Pacific leatherback sea turtles.

Dungeness crab supports a popular recreational fishery that primarily occurs between San Luis Obispo and Del Norte counties. Dungeness crab are primarily fished using crab traps on private and commercial passenger fishing vessels. However, at the start of the 2021-2022 Dungeness crab recreational fishing season (the first Saturday of November), a dramatic increase in hoop net use from operators on both types of these vessels occurred between Monterey and Sonoma counties due to the prohibition on use of crab traps. The crab trap prohibition was declared November 1, 2021 by the Department Director in response to increased marine life entanglement risk at the time and lasted for 5-6 weeks. Another crab trap prohibition was declared for the Dungeness crab season in April 2022 north of Point Arguello, Santa Barbara County, to the California-Oregon border and lasted 10 and 14 weeks in the central and northern regions of the fishery, respectively. High marine life concentrations at the start of the 2022-2023 fishing season again resulted in a statewide trap

prohibition. The prohibition was lifted north of the Sonoma/Mendocino county line on November 28, 2022 and lasted a period of three weeks, while the prohibition remained in effect for 10 weeks south of the Sonoma/Mendocino county line until January 14, 2023.

Traps and hoop nets both use vertical lines which pose a risk of entanglement; but the entanglement risk from hoop nets is inherently lower than traps due to their frequent service interval requirement of no more than two hours. However, the original regulatory language describing the service interval lacked clarity and caused confusion about whether it pertained to the area north of Point Arguello, Santa Barbara County. Clarifying that the service interval is applicable statewide will make it easier to both enforce and ensure this gear type will not be left out longer, especially during times of elevated entanglement risk. Increased hoop net use along with longer service intervals could result in increased entanglements with federally protected species in addition to increased amounts of lost or abandoned gear.

At the August 17, 2022 Commission meeting, the Department notified the Commission that gear manufacturers are developing new hoop net designs that follow current hoop net Type B regulations but resemble traps. Hoop nets constructed to behave like traps may incentivize longer soak periods posing elevated entanglement risk. The emergency regulations further specify current hoop net requirements to prevent widespread development of these new designs on the mass market and address elevated entanglement risk these new designs pose. These hoop nets will become harder to restrict once there has been public investment.

Lastly, the emergency regulations make gear marking requirements for hoop nets consistent statewide as part of a broader effort to mark gear for all fixed gear fisheries to reduce entanglements from unknown gear. This will help identify operators of hoop nets for law enforcement purposes of active and lost or abandoned gear. Gear marking will also aid in the identification of hoop nets that could be involved in marine life entanglements. Identifying fisheries in the event of an 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.

Proposed Regulations

The proposed readoption would extend the emergency regulation in subsection 29.80(b). The current emergency rule will expire on May 2, 2023 unless it is readopted for an additional 90 days. The emergency rule needs to be readopted to keep current hoop net regulations in place to safeguard federally protected species and minimize entanglement risk as much as feasible for the entire recreational Dungeness crab season that ends July 30, 2023. A regular rulemaking to adopt these hoop net changes as well as changes to the California spiny lobster fishery is underway. The regular rulemaking is expected to be adopted and effective in time before the expiration date of the second readoption.

In order to obtain the necessary information to inform that rulemaking and protect resources while it is promulgated, the current emergency rule will need to be extended

Benefits of the Regulation:

The Commission anticipates benefits to the State's environment by sustainably managing California's ocean resources and reducing bycatch. The environmental risks arising from the proposed rule are

not regarded as significant, as the rule manages the resource more conservatively than existing regulation.

Consistency and Compatibility with Existing Regulations

Article IV, Section 20 of the State Constitution specifies that the Legislature may delegate to Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated authority to the Commission to promulgate sport fishing regulations (Fish and Game Code sections 200, 205, 315, and 316.5). Commission staff has searched the California Code of Regulations and has found no other state regulations that address the recreational take of crabs using hoop net gear. The Commission has reviewed its own regulations and finds that the proposed regulations are consistent with other recreational fishing regulations and marine protected area regulations in Title 14, CCR, and therefore finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Emergency Regulatory Language

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

§29.80. Gear Restrictions for Recreational Take of Saltwater Crustaceans

(a) General Provisions.

(1) Saltwater crustaceans may be taken by hand.

(2) Nets, traps or other appliances may not be used except as provided in this Section.

(3) It is unlawful to disturb, move, or damage any trap; or remove any saltwater crustacean from a trap, that belongs to another person without written permission including permission transmitted electronically, in possession from the operator of the trap. Any person with written permission from the operator of a crab trap will be in compliance with subsection (c)(3)(A)1. if the written permission contains the operator's GO ID number that matches the GO ID number on the buoy of the crab trap being fished.

~~(b) 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.~~

(b) Hoop Nets

(1) Hoop nets may be used to take spiny lobsters and all species of crabs.

(2) 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.

(3) It is unlawful to abandon or leave unchecked a hoop net for more than 2 hours. Any hoop net abandoned or left unchecked for more than 2 hours may be seized by any person authorized to enforce these regulations.

~~(4)~~ (4) Hoop Net Defined: There are two types of hoop nets 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. Lift lines shall be attached only to the top ring. 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. When the net is being 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. 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. When

suspended from lift lines, the entire hoop net shall measure no taller than 36 inches. 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. The ~~upper top~~ ring or rings 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. The rings and support material shall not be thicker than one inch in any dimension. All rings shall be connected by non-metallic soft mesh, thereby forming a net with an enclosed bottom, and lift lines shall be attached only to the top ring. It is unlawful to have any entrances below the top ring. When suspended from lift lines the enclosed bottom portion of the net shall be even with or hanging below all other rings, and the entire net shall measure no taller than 30 inches. A bait ring may be attached to the net as long as the ring is not 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.~~

(5) Limits: 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. Hoop net limits do not apply north of Point Arguello to the California-Oregon border.

~~(36) Gear Identification Requirements: Hoop nets used south of Point Arguello, Santa Barbara County, shall be marked with a surface buoy, except for those hoop nets deployed by persons on shore or manmade structures connected to the shore. 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.

(C) In all other cases, 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, or the GO ID number of one operator if there are multiple operators.

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

NOTE: Authority cited: Sections 200, 205, 265, 275, 399, 7075 and 7078, Fish and Game Code. Reference: Sections 200, 205, 265, 270, 275, 7050, 7055 and 7056, Fish and Game Code.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

DRAFT**ECONOMIC IMPACT STATEMENT**

DEPARTMENT NAME Fish and Game Commission	CONTACT PERSON David Thesell	EMAIL ADDRESS fgc@fgc.ca.gov	TELEPHONE NUMBER 916 902-9291
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Readoption of Emergency Action to Amend Subsection 29.80 (b), Title 14, CCR, Re: Hoop Nets			NOTICE FILE NUMBER Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|--|---|
| <input type="checkbox"/> a. Impacts business and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input type="checkbox"/> c. Impacts jobs or occupations | <input type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input checked="" type="checkbox"/> h. None of the above (Explain below): |

Emergency action does not require economic assessment; only fiscal impact assessment is required.***If any box in Items 1 a through g is checked, complete this Economic Impact Statement.******If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.***2. The _____ estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

- ☐ Below \$10 million
- ☐ Between \$10 and \$25 million
- ☐ Between \$25 and \$50 million
- ☐ Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a [Standardized Regulatory Impact Assessment](#) as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: _____

Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total
businesses impacted that are small businesses: _____

4. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

5. Indicate the geographic extent of impacts: ☐ Statewide
☐ Local or regional (List areas): _____

6. Enter the number of jobs created: _____ and eliminated: _____

Describe the types of jobs or occupations impacted: _____

7. Will the regulation affect the ability of California businesses to compete with
other states by making it more costly to produce goods or services here? ☐ YES ☐ NO

If YES, explain briefly: _____

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DRAFT**ECONOMIC IMPACT STATEMENT (CONTINUED)****B. ESTIMATED COSTS** *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____

a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____

d. Describe other economic costs that may occur: _____

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements.
Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted. \$ _____4. Will this regulation directly impact housing costs? ☐ YES ☐ NO

If YES, enter the annual dollar cost per housing unit: \$ _____

Number of units: _____

5. Are there comparable Federal regulations? ☐ YES ☐ NO

Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: _____

2. Are the benefits the result of: ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?

Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: _____

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

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ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ _____ Cost: \$ _____

Alternative 1: Benefit: \$ _____ Cost: \$ _____

Alternative 2: Benefit: \$ _____ Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____
_____4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ YES ☐ NOExplain: _____
_____**E. MAJOR REGULATIONS** *Include calculations and assumptions in the rulemaking record.****California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.***1. Will the estimated costs of this regulation to California business enterprises **exceed \$10 million**? ☐ YES ☐ NO***If YES, complete E2. and E3******If NO, skip to E4***

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

☐ YES ☐ NO*If YES, agencies are required to submit a [Standardized Regulatory Impact Assessment \(SRIA\)](#) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.*

5. Briefly describe the following:

The increase or decrease of investment in the State: _____
_____The incentive for innovation in products, materials or processes: _____
_____The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
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FISCAL IMPACT STATEMENT**A. FISCAL EFFECT ON LOCAL GOVERNMENT** *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

- ☐ 1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

- ☐ a. Funding provided in _____

Budget Act of _____ or Chapter _____, Statutes of _____

- ☐ b. Funding will be requested in the Governor's Budget Act of _____

Fiscal Year: _____

- ☐ 2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

- ☐ a. Implements the Federal mandate contained in _____

- ☐ b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

- ☐ c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

- ☐ d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

- ☐ e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

- ☐ f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

- ☐ g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

- ☐ 3. Annual Savings. (approximate)

\$ _____

- ☐ 4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

- ☒ 5. No fiscal impact exists. This regulation does not affect any local entity or program.

- ☐ 6. Other. Explain _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
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FISCAL IMPACT STATEMENT (CONTINUED)**B. FISCAL EFFECT ON STATE GOVERNMENT** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

It is anticipated that State agencies will:☐ a. Absorb these additional costs within their existing budgets and resources.☐ b. Increase the currently authorized budget level for the _____ Fiscal Year☐ 2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

☒ 3. No fiscal impact exists. This regulation does not affect any State agency or program.☐ 4. Other. Explain _____
_____**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

☐ 2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

☒ 3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.☐ 4. Other. Explain _____

FISCAL OFFICER SIGNATURE


DocuSigned by:
Dan Reagan
8568D784E2D9A7D

DATE

1/17/2023

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY

DATE



Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER

DATE



STD399 ADDENDUM

Readoption of Emergency Action to Amend
Subsection 29.80(b)
Title 14, California Code of Regulations (CCR)
Re: Hoop Nets

Economic Impact Statement**A. Estimated Private Sector Cost Impacts**

1. Answer: h. None of the above. (Explain below):

Emergency regulations do not require an economic impact statement; only fiscal impacts must be evaluated (California Government Code Section 11346.1).

Fiscal Impact Statement details are provided below.

Fiscal Impact Statement

The proposed readoption of emergency regulations to amend subsection 29.80(b) which would redefine approved hoop net construction, expand the area where hoop nets must be marked with a buoy and reorganize hoop net requirements by specific topic for clarity is not anticipated to have fiscal impacts on local or state governments, nor will there be effects to federal funding of state programs.

A. Fiscal Effect on Local Government

Answer: 5. No fiscal impact.

The Commission anticipates that the proposed emergency action will have no fiscal effect on local government.

B. Fiscal Effect on State Government

Answer: 3. No fiscal impact.

The Commission anticipates that the proposed emergency action will have no fiscal effect on state government. The California Department of Fish and Wildlife has determined that the proposed change to hoop net requirements will not affect the already existing level of monitoring and enforcement activities.

Additionally, no other state agencies would be affected by this regulatory action.

C. Fiscal Effect on Federal Funding of State Programs

Answer: 3. No fiscal impact.

The proposed emergency action will not have a fiscal effect on federal funding of state programs.

STAFF SUMMARY FOR OCTOBER 12-13, 2022*For background purposes only***16. RECREATIONAL HOOP NET REGULATIONS****Today's Item**Information ☐Action ☒

Discuss and consider adopting emergency regulations to amend and clarify hoop net regulations in order to minimize entanglement risk of federally-protected species and to expand the current identification requirement in effect south of Pt. Arguello, Santa Barbara County, to apply statewide.

Summary of Previous/Future Actions

- | | |
|---|--|
| • MRC discussed proposed California spiny lobster (lobster) regulation changes and recommendation | Jul 14, 2022; MRC, Santa Rosa |
| • DFW Marine Region update | Aug 17, 2022; Loleta |
| • Today's adoption of regulations through emergency rulemaking | Oct 12-13, 2022; Kings Beach |
| • Notice hearing for regular rulemaking | Dec 14-15, 2022; San Diego area |
| • Discussion hearing for regular rulemaking | Feb 8-9, 2023; Sacramento |
| • Adopt first emergency 90-day extension | Feb 8-9, 2023; Sacramento |
| • Adoption hearing for regular rulemaking | Apr 19-20, 2023; Fresno/Bakersfield area |
| • Adopt second emergency 90-day extension | Jun 14-15, 2023; Location TBD |
| • Regular rulemaking effective date | Sep 1, 2023 (estimated) |

Background

Current regulations specify that hoop nets may be used to take spiny lobster and all species of crab, define two authorized types of hoop nets, require regular servicing of hoop nets, and limit the number and require marking of hoop nets used south of Point Arguello, Santa Barbara County (subsection 29.80(c)).

At the Aug 17, 2022 FGC meeting, DFW notified FGC that it had identified a dramatic increase in hoop net fishing effort in the Dungeness crab (*Metacarcinus magister*) recreational fishery since the implementation of new crab trap regulations on Nov 1, 2021 (in Section 29.80). Specifically, the increase in hoop net effort occurred during times of elevated marine life entanglement risk following declaration by the DFW director that use of crab traps was prohibited pursuant to subsection 29.80(c).

Additionally, DFW has learned that gear manufacturers are developing new hoop net designs that function like traps, and yet meet the specifications in current regulations for hoop nets. Hoop nets constructed to function like traps may motivate users to increase the amount of time that a hoop net is kept in the water (soak periods) posing elevated entanglement risk. Based on these circumstances, urgent action is needed to safeguard federally protected species during periods of elevated entanglement risk.

STAFF SUMMARY FOR OCTOBER 12-13, 2022*For background purposes only*

The proposed emergency rulemaking will amend and clarify hoop net regulations to minimize entanglement risk of federally protected humpback whales, blue whales, and Pacific leatherback sea turtles. Specifically, the proposed regulations will:

- Ensure that hoop nets are regularly serviced every two hours;
- modify design specifications to prevent the device from functioning as a crab trap that could incentivize longer soak periods;
- reduce the weight of the hoop net, thereby posing less harm to an entangled whale or sea turtle should that occur; and
- expand current gear marking requirements for hoop nets used south of Point Arguello, Santa Barbara County, to apply statewide, which will aid in identifying this gear type for enforcing these requirements and identify hoop nets involved in entanglements.

The “Commercial and Recreational Take of California Spiny Lobster and Recreational Hoop Net Requirements for Take of Crustaceans” rulemaking scheduled for a notice hearing in Dec 2022, is proposed to continue the emergency regulations through a regular, non-emergency rulemaking process. However, up to two 90-day extensions of the emergency regulations will be necessary to cover the time period until the non-emergency regulations go into effect, anticipated to be Sep 1, 2023.

Significant Public Comments (N/A)**Recommendation**

FGC staff: Adopt the emergency regulations as recommended by DFW.

DFW: Adopt the emergency regulations as presented in the emergency statement in Exhibit 2.

Exhibits

1. Memo received Sep 16, 2022
2. Draft emergency statement, received Sep 16, 2022
3. Draft economic and fiscal impact statement (STD. 399)
4. DFW presentation

Motion

The Commission determines, pursuant to Section 399 of the California Fish and Game Code, that adopting these regulations is necessary for the immediate conservation, preservation, and protection of birds, mammals, fish, amphibians, or reptiles, including, but not limited to, their nests or eggs.

The Commission further determines, pursuant to Section 11346.1 of the California Government Code, that an emergency situation exists and finds the proposed regulations are necessary to address the emergency.

STAFF SUMMARY FOR OCTOBER 12-13, 2022

For background purposes only

Moved by _____ and seconded by _____ that the Commission adopts the emergency regulations amending subsection (b) of Section 29.80, related to the use of hoop nets for the recreational take of lobster and crab.