

CALIFORNIA FISH AND GAME COMMISSION
FINDING OF EMERGENCY AND
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION

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

Date of Statement: May 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 Dungeness crab 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 Second Readoption of Emergency Regulations

The current emergency rule (first 90-day extension) will expire on August 1, 2023 unless it is readopted for an additional 90 days.

A regular rulemaking (Certificate of Compliance) amending Section 29.80, that includes these hoop net provisions, was adopted at the April 20, 2023 Commission meeting, and will be filed with the Office of Administrative Law with a request to be effective September 1, 2023. In order to protect resources while the regular rulemaking is reviewed under the Administrative Procedure Act, the current emergency rule needs to be extended.

This second readoption of the emergency regulations will be effective for 90 days between August 1 and October 30, or on the effective date, September 1, of the permanent regulation. The 2023-24 spiny lobster season begins on Saturday, September 30; Dungeness crab season opens Saturday, November 4; and, recreational rock crab season is year-round. All dates for the open seasons are covered by the emergency and then the permanent regulation.

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

Prior Commission Actions

On October 13, 2022, the Commission adopted, and on February 9, 2023, the Commission readopted 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 recreational Dungeness crab and spiny lobster seasons (generally between October and July), and recreational rock crab year-round season. 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. Another crab trap

prohibition for the area south of the Sonoma/Mendocino county line took effect on May 15, 2023 at 12:00pm. 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 amending Section 29.80 was adopted by the Commission on April 20, 2023, and will be submitted to the Office of Administrative Law.

Proposed Action by the Commission

The Commission proposes the readoption of emergency amendments to subsection 29.80(b) that are the same as currently 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 of Crab Trap Prohibition in the Recreational Dungeness Crab Fishery and Depth Constraint for the Commercial Dungeness Crab Fishery Due to Risk of Marine Life Entanglement \(May 2, 2023\)](#)

[California Department of Fish and Wildlife \(Department\) Declaration of Fishery Management Action Modification in the Commercial and Recreational Dungeness 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 during the recreational Dungeness crab and spiny lobster seasons (generally between October and July), and recreational rock crab year-round season.

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

On February 9, 2023, the Commission readopted the emergency regulations for an additional 90 days. The Department recommends that the Commission continue the emergency action with the second 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. Another crab trap prohibition for the area south of the Sonoma/Mendocino county line took effect on May 15, 2023 at 12:00pm.

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 (first 90-day readoption) will expire on August 1, 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. A regular rulemaking (Certificate of Compliance) that includes these hoop net changes as well as changes to the California spiny lobster fishery was adopted at the April 20, 2023 Commission meeting, is slated to be effective September 1.

This second readoption of the emergency regulations will be necessary to keep the emergency regulations in place until the regular rulemaking goes into effect.

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.