

**State of California
Office of Administrative Law**

In re:
Department of Fish and Wildlife

Regulatory Action:

Title 14, California Code of Regulations

Adopt sections:
Amend sections: 228(a)
Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**


OAL File No. 2013-1216-01 EE

The Department of Fish and Wildlife (Department) submitted this emergency readoption action to extend the amended definition of suction dredging in title 14, California Code of Regulations, section 228(a) made in OAL File No. 2013-0618-02E. The amended definition in section 228(a) was made for purposes of Fish and Game Code sections 5653 and 5653.1. In this context, suction dredging or suction dredge mining is a method of vacuuming material from rivers, streams, or lakes for the extraction of minerals. There is currently a statutory moratorium on suction dredge mining pursuant to Fish and Game Code section 5653.1(b). The former definition of suction dredging was prescriptive and resulted in members of the public evading compliance with the Fish and Game Code by modifying suction dredging equipment. The Department's amendment closed the loophole in the former definition in order to allow the Department to enforce its regulatory and statutory authority over suction dredge mining activities.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 12/26/2013 and will expire on 3/27/2014. The Certificate of Compliance for this action is due no later than 3/26/2014.

Date: 12/26/2013


Richard L. Smith
Senior Counsel

For: DEBRA M. CORNEZ
Director

Original: Charlton Bonham
Copy: Craig Martz

NOTICE PUBLICATION/REGULATIONS SUBMISSION

EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2013-1216-01EE
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ENDORSED FILED IN THE OFFICE OF

2013 DEC 26 AM 11:49

Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

For use by Office of Administrative Law (OAL) only

2013 DEC 16 AM 10:54
OFFICE OF ADMINISTRATIVE LAW

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY Fish and Wildlife	AGENCY FILE NUMBER (if any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Suction Dredging; Use of Vacuum and Suction Dredge Equipment	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2013-0618-02 E
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT Section 228, subdivision (a) <i>per agency. RS</i>
AMEND Section 228, subdivision (a)
REPEAL
TITLE(S) 14

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input checked="" type="checkbox"/> Effective other (Specify) <i>per agency. RS By December 26, 2013</i>

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____

7. CONTACT PERSON Craig Martz	TELEPHONE NUMBER (916) 653-4681	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) regulations@wildlife.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>CHB</i>	DATE 12/16/13
TYPED NAME AND TITLE OF SIGNATORY Director, Charleston H. Bonham	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 26 2013

Office of Administrative Law

Text of Specific Regulatory Language to be Amended

Amend California Code of Regulations, Title 14, section 228, subdivision (a), to read:

§ 228. Suction Dredging.

The Department has adopted this Section and Section 228.5 pursuant to Fish and Game Code Section 5653.9, and to make specific and otherwise implement Fish and Game Code Section 5653, specifically. Pursuant to that authority, the Department finds that suction dredging subject to and consistent with the requirements of Sections 228 and 228.5 will not be deleterious to fish.

(a) Suction dredging. For purposes of this Section and Section 228.5, the use of any vacuum or suction dredge equipment (i.e. suction dredging) is defined as the use of a suction system to vacuum material from a river, stream or lake for the extraction of minerals. These regulations do not apply to, prohibit or restrict nonmotorized recreational mining activities, including panning for gold.

[No readoption or other amendment to any other subdivision of Section 228 is proposed.]

Note: Authority cited: Sections 5653 and 5653.9, Fish and Game Code. Reference: Sections 5653 – 5653.9, Fish and Game Code.

December 9, 2013