

Economic Impact Assessment
Amend Section 228 subdivision (a), Title 14, CCR

The California Department of Fish and Wildlife (Department) regulates the use of vacuum and suction dredge equipment in California rivers, streams, and lakes pursuant to Fish and Game Code section 5653. In March 2012, for the first time since 1994, the Department updated and adopted comprehensive regulations to implement its related permitting program. (Cal. Code Regs., tit. 14, §§ 228, 228.5; see also Fish & G. Code, § 5653.9.) Consistent with statute, the updated regulations implement Section 5653.¹

On June 28, 2013, the Office of Administrative Law (OAL) approved an emergency action by the Department under the Administrative Procedure Act (APA) to amend the regulatory definition of suction dredging. (See Cal. Code Regs., tit. 14, 228, subd. (a); Cal. Reg. Notice Register 2013, No. 28-Z, pp. 1034-1035; OAL File No. 2013-0618-02E.) On December 26, 2013, OAL approved the Department's proposed emergency rulemaking action to readopt the definition. (Cal. Reg. Notice Register 2014, No. 2-Z, pp. 60-61; OAL File No. 2013-12-16-01EE.) Thus, the new definition is now in effect statewide. Under the Administrative Procedure Act (APA), the emergency regulatory definition can remain in effect by law for no more than 360 days following the initial emergency action. (Gov. Code, § 1346.1, subds. (e), (h).) The proposed amendment would adopt this definition, already in effect, through regular noticed rulemaking.

Under the existing and proposed definition, 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. (Cal. Code Regs., tit. 14, § 228, subd. (a), effective June 28, 2013.) The definition also provides that, for purposes of the same sections, the definition and related regulations do not apply to, prohibit or restrict nonmotorized recreational mining activities, including panning for gold. (*Ibid*)

A. Effects of the Regulation on the Creation or Elimination of Jobs

The Department does not anticipate any impacts on the creation or elimination of jobs within the State because the proposed action is limited to the adoption through regular noticed rulemaking of an existing emergency regulation in effect as previously adopted by the Department in June 2013, as recently readopted and extended in December 2013. Prior to late June 2013, a limited number of miners were found to be modifying their equipment and practices to evade the Department's regulatory authority, and the letter and spirit of the statutory moratorium codified in Fish and Game Code sections 5653 and 5653.1, respectively. While not extensive in scope, these unregulated mining activities had the potential to cause substantial adverse environmental effects, including impacts as identified by the Department in 2012 in its *Suction Dredge Permitting Program Subsequent Environmental Impact Report* (SCH No. 2009112005).

¹ All unspecified "section" references are to the Fish and Game Code.

The economic contribution of the relatively few miners that sought to exploit an ambiguity in the adopted definition is unknown, but is not estimated to be sufficient to induce the creation or elimination of jobs. Moreover the activities of these few miners in 2013 had the potential to conflict with other recreational uses, such as rafting, fishing, hiking, and camping. Spending associated with these other activities could be reduced due to the noise, engine exhaust, access, safety and water turbidity problems resulting from suction dredging activities.

B. Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses

The Department does not anticipate any impacts on the creation of new business or the elimination of existing businesses because the regulatory change merely adopts the regulatory definition of suction dredging that has been in effect as an emergency regulation since June 2013. The limited amount of “loophole” mining that occurred prior to adoption of the emergency regulations was insufficient to spur the creation of new businesses or the elimination of existing businesses. This definition will continue to effectively prohibit environmentally deleterious suction dredging techniques, while allowing other mining methods. The sum of mining activity and spending is expected to remain unchanged. Adoption of the regulation through regular rulemaking would continue to minimize the conflicts that other recreationists experience related to suction dredging activities.

C. Effects of the Regulation on the Expansion of Businesses in California

The Department does not anticipate any impacts on the expansion of businesses in California because the regulatory action is to adopt the definition of suction dredging that has been in effect as an emergency regulation since June 2013. The very small amount of “loophole” mining that occurred prior to adoption of the emergency regulations was insufficient to stimulate the expansion of businesses in California. The proposed action should not affect the volume of mining and other recreational activity or the spending associated with those activities.

D. Benefits of the Regulation

Benefits to the environment

The Department anticipates benefits to the State’s environment in the sustainable management of aquatic habitats for fish and amphibian populations and benefits to the species that depend upon them. Specifically, the Department anticipates that the amended definition of suction dredging will benefit the environment in the following ways:

- Limiting the mobilization of mercury, which mobilization potentially poisons fish and wildlife;
- Limiting deleterious effects to fish, amphibians and songbirds from habitat disruption; and
- Limiting adverse changes statewide in Native American cultural and historical resources.

Benefits to the health and welfare of California residents

The Department anticipates that the amended definition of suction dredging will benefit the health and welfare of California residents in the following ways:

- Limiting the mobilization of mercury, that harms drinking-water quality;
- Through the protection of aquatic and riparian habitats and the species they support, generalized benefits to the health and welfare of California residents use and enjoyment of the state's natural resources.

Benefits to worker safety

The Department does not anticipate any benefits to worker safety from the proposed regulations because the proposed regulations will not impact worker conditions.