

State of California
Fish and Game Commission
Finding of Emergency and Statement of Proposed Emergency Regulatory Action

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

Date of Statement: September 14, 2022

I. Statement of Facts Constituting the Need for Emergency Regulatory Action

Background

Current regulations in subsection 29.80(b), Title 14, California Code of Regulations (CCR), 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. Current regulations in subsection 29.80(c), Title 14, CCR, 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.

A dramatic increase in hoop net fishing effort in the Dungeness crab (*Metacarcinus magister*) recreational fishery during times of elevated marine life entanglement risk has created the need to apply for an emergency rulemaking to amend current hoop net regulations before the start of the next Dungeness crab season. This increase in hoop net fishing effort was a result of crab trap prohibitions declared pursuant to subsection 29.80(c), Title 14, CCR. The emergency rulemaking will amend and clarify hoop net regulations 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 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 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. Given the potential for a dramatic increase in hoop net gear being used in the north during periods of elevated marine life entanglement risk, a standard rulemaking by the California Fish and Game Commission (Commission) would not work to address this entanglement risk since it would not be implemented until the season ended in July 2023. Therefore, the soonest Commission meeting a rulemaking could be approved and in place before the start of the 2022-2023 recreational Dungeness crab

fishing season will be at the Commission's October meeting, which is a key driver for this emergency regulation.

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 current regulatory language describing the service interval lacks clarity and has caused confusion about whether it pertains 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.

The Department has been made aware that gear manufacturers are developing new hoop net designs that follow current hoop net Type B regulations but function like traps. Hoop nets constructed to function like traps may incentivize longer soak periods posing elevated entanglement risk. The Department is recommending to 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, gear marking requirements for hoop nets need to be 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 (Section 132.8, Title 14, CCR).

II. Proposed Emergency Regulations

The proposed rule would amend subsection 29.80(b), Title 14, CCR, to create new subsections (1) through (6) that would 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 under subsection (b) will be divided into separate subsections (1), (2) and (5) and is otherwise unchanged. Placing these statements in separate subsections will remove the reference to the geographic area where hoop net limits occur to no longer precede 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) will be 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.

Current subsection (1) will be renumbered as subsection (4) and contain the topic of "Hoop Net Defined". For both hoop net types, regulatory language will be amended to require "non-metallic"

soft mesh. Type A hoop nets are intended to be collapsible, and a metallic mesh structure could impede this design. In addition, regulatory text regarding type B hoop nets will be amended to restrict 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. Type B hoop nets will also require that they be constructed using rigid “straight” support arms and to 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 will 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) will be organized under the new topic title of “Limits” and the original regulatory text from the second sentence of subsection (b) will be moved here unaltered. An additional statement will be added to clarify that hoop net limits do not apply north of Point Arguello, Santa Barbara County, to the California-Oregon border.

Current subsection (3) will be renumbered as subsection (6) and will be organized under the new topic title of “Gear Identification Requirements”. The current 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, will be expanded to apply statewide. The second sentence of current subsection (3) regarding surface buoy marking requirements will be moved to new subsection (6)(C) and amended to reflect its new location. This subsection will follow the buoy marking requirements for commercial passenger fishing vessels under subsection (6)(A) and licensed guides under subsection (6)(B). A statement will be 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.

III. Findings for the Existence of an Emergency

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, after the start of the Dungeness crab season on November 5, 2022. The coastal waters of Monterey Bay, 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 Dungeness crab season on November 5, 2022 could result in a crab trap prohibition, which would result in increased use of hoop nets in offshore waters. Hoop net fishing effort then may overlap with foraging whales and sea turtles because some whales and sea turtles may be present within the fishing grounds well into December. Emergency regulations will maintain the low entanglement risk of this device by ensuring that hoop nets will be regularly 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:

NOAA 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 amend hoop net regulations to minimize entanglement risk of federally protected humpback whales, blue whales, and Pacific leatherback sea turtles, as a result of the recently implemented crab trap prohibition during the recreational Dungeness crab season.

IV. Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) 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

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

[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 \(February 26, 2020\)](#)

VI. Authority and Reference

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

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VII. Fish and Game Code Section 399 Finding

Delay in the amendments to hoop net devices could result in increased entanglement risk at the start of the Dungeness crab season on November 5, 2022. Emergency action is necessary now to safeguard federally protected species and minimize risk as much as feasible.

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

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The Department recommends that the California Fish and Game Commission (Commission) amend the hoop net regulations. The proposal would amend subsection 29.80(b), Title 14, CCR, through emergency action. The proposal is necessary to safeguard federally protected species from marine life entanglement risk.

The concerns addressed by this emergency action are:

- Clarify hoop net service interval requirement of 2 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

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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.