

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Section 29.80
Title 14, California Code of Regulations
Re: Gear Restrictions

I. Date of Initial Statement of Reasons: July 1, 2009

II. Dates and Locations of Scheduled Hearings:

- | | | | |
|-----|--------------------------|-----------|-------------------|
| (a) | Notice Hearing: | Date: | August 6, 2009 |
| | | Location: | Woodland |
| (b) | Discussion Hearing: | Date: | October 1, 2009 |
| | | Location: | Woodland |
| (c) | Discussion Hearing Date: | Date: | November 5, 2009 |
| | | Location: | Woodland |
| (d) | Adoption Hearing: | Date: | December 11, 2009 |
| | | Location: | West Sacramento |

III. Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

29.80 (b) states that spiny lobster may be taken by baited hoop nets. There is currently no definition of a baited hoop net. For many years a hoop net consisted of two hoops connected by net meshing (old style). The top hoop was larger than the bottom hoop. When the hoop net sat on the bottom of the ocean it laid flat. When lobster fed on bait attached to the hoop net they were free to come and go with nothing keeping them in the hoop net. When raised to the surface the net meshing stretched out between the hoops and caught anything that was feeding in the net at the time.

Within the last couple of years there have been several new types of devices developed being called hoop nets. These newly created devices are becoming more efficient and are fishing like traps. Section 29.80 (a)(2) prohibits the use of traps to take lobster. These newly designed hoop nets consist of an upper and lower metal hoop. The bottom hoop is approximately 3 feet in diameter. The upper hoop is about 1-2 feet in diameter. The two hoops are separated with 3-4 rigid pieces of metal approximately 6-12 inches in length, which are connected to both hoops so the upper hoop sits about 6 -12 inches above the lower hoop. Between the two hoops is mesh netting. When the hoop net sits on the ocean floor, the top hoop is supported by rigid arms which allow the top hoop to sit above the lower hoop with mesh netting raised in between the two hoops. A lobster will climb up the outside of the mesh netting and enter the top of the device. It then climbs into the net to get to the bait. Depending on the height of the upper hoop, the lobster may or may not be able to exit the device. When the lobster needs to make a quick escape, such as

when the device is moved, the lobster swims backwards into the mesh netting and cannot escape. It is also unclear whether a small lobster, once inside the net, can crawl out of the net. This could cause unintended mortalities if the device was lost and the small lobster could not escape. As a result, these new style devices could be considered traps, which are not legal for recreational take and are not constructed in a way consistent with the legal requirements as specified in Fish and Game Code Section 9010.

Wardens in the field are reporting the popularity and efficiency of the new style devices. They are finding the success of those using these devices much greater than those using the old style hoop nets. As of July 1, 2009, the Department had entered data from 10% (2716) of the report cards received. Of the 2716 cards, the data showed that there were 790 people using traditional style hoop nets to take lobsters. There were 531 people using the new style devices. The current data shows that there is a 1.81 catch per outing with the old style hoop nets and a 2.43 catch per outing with the new style devices.

The field wardens feel some of these new style devices act like traps. This causes a concern that the recreational hoop net fishery is evolving into something that was not intended when the legislature prohibited the use of traps for recreational lobster fishing (Fish and Game Code Sections 8250.5 and 7256).

Unless the Fish and Game Code is changed to permit recreational use of traps for the take of lobster, the Department is obliged to make sure recreational lobster fishermen use legal hoop nets. In this regard, a problem exists because there is no definition of a legal hoop net. A definition of a hoop net is needed to make the methods of take enforceable and compliant with the intent of the legislature.

The Department is providing two options for the definition of a hoop net for the commission to consider. The definitions will include the old style hoop net that lies flat on the ocean floor as well as the new style device. In addition, both options contain minor changes to enhance enforcement regarding the number of hoop nets permitted for use and on vessels and possession of spears or hooking devices when scuba diving for lobsters.

The current wording in CCR T-14 29.80 (b) needs to be written in a way that makes the intention of the section more enforceable. Currently a person may not fish with more than 5 baited hoop nets south of Point Arguello while taking crabs and lobsters. The wording "fished" and "baited" make this section hard to enforce. In order to meet the elements of a crime, the nets in the water have to be baited. If the lobster or crabs eat the bait when it is in the water prior to the warden pulling the hoop net, there would be no violation since the net is not baited. New wording needs to be added to the section making the limit for hoop nets, a possession limit, not a "fished" limit. This way the section can be enforceable.

There is a restriction in the regulations that no hooked device be possessed while diving for crustaceans. It is common for wardens to contact divers with spears when diving for lobsters. Some of the spears have barbs (hooked devices) and some do not. Spears, such as Hawaiian slings, usually do not have barbs but do have long handles. The spear is capable of assisting in the take of lobsters without leaving spear holes in the lobster. Enforcement recommends that spears or hooked devices not be allowed to be possessed while diving or attempting to dive for crustaceans.

Option 1

This option creates a definition of a hoop net that requires the main parts of the hoop net to lay flat on the ground and not have an elevated upper hoop ring. This will permit the lobsters to more freely move in and out of the hoop net and therefore keep the recreational take of lobster consistent with the legislative intent.

The Department recommends this option since it is consistent with Fish and Game Code.

Option 2

This option allows for up to 3 hoops to be integrated into the hoop net. It would allow for the top hoop to sit no more than 10 inches off of the ocean floor if supported and have an inside diameter between 19 and 21 inches. This definition would also include the current make up of the old style hoop net which lies flat on the ocean floor when deployed. This option also restricts the possession of these nets to 3 for one person and 6 if more than one person is fishing from a boat for lobsters. The reason for this change is the efficiency of the new device.

The Department does not recommend this option since it is not consistent with Fish and Game Code and it is unclear whether or not it may negatively effect lobster population due to the increase in take of lobster by the sport fishery.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 202, 205, 215 and 220 Fish and Game Code.

Reference: Section 202, 205, 206, 215 and 220 Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change:

None

(d) Identification of Reports or Documents Supporting Regulation Change:

Book by Jamie Salazar called *"Hoopin' It Up a Guide to Lobster and Crab Hoop netting"* explains the use of both type types of hoop nets and shows what the nets look like and how they are fished.

(e) Public Discussions of Proposed Regulations Prior to Notice publication:

None

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Allow lobsters to be taken with traps.

This alternative would increase the take of lobsters and possibly negatively impact the lobster resource. It would also increase the efficiency of taking lobster, which would likely increase the illegal commercialization of the recreational fishery.

(b) No Change Alternative:

The no change alternative would allow the current confusion to continue with no clear guidance as to what is or is not a legal hoop net.

(c) Consideration of Alternatives:

Alternative #1: The definition of a hoop net will only include the old traditional type of hoop net that lies flat on the ocean floor and allow lobsters to come and go freely. This option will also clarify that you cannot possess more than 5 hoop nets while taking lobsters or possess no more than 10 on a boat if more than 2 people are taking lobsters.

Alternate #2: The definition will include wording that will allow both the traditional as well as the new style conical design device which allows for the top ring of the device to sit above the ocean floor when deployed. This option will also make it unlawful to possess more than 3 of the conical shaped devices when fishing for lobsters.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

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 initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

Proposal #1 may have an economic impact on those who currently sell the new style device that has the ring that sits above the ocean floor when deployed. The company that has a patent on the new style devices also manufactures the old style hoop net. If the new style device were banned, they could still sell the old style hoop net throughout the State.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. People who currently possess the rigid type device may be able to modify the device by cutting off the rigid pieces of metal which would allow the net to lie flat. This device would then fit the proposed definition of a hoop net. The estimated cost of the new style device is \$20 - \$40 without the line and float rigging.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

(e) Nondiscretionary Costs/Savings to Local Agencies: None

- (f) Programs mandated on Local Agencies or School Districts: None
- (g) 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: None
- (h) Effect on Housing Costs: None

Informative Digest/Policy Statement Overview

29.80 (b) states that spiny lobster may be taken by baited hoop nets. There is currently no definition of what a baited hoop net is. For many years a hoop net consisted of two hoops connected by net meshing. The top hoop was larger than the bottom hoop. When the hoop net sat on the bottom of the ocean it laid flat. When lobster fed on bait attached to the hoop net they were free to come and go with nothing keeping them in the hoop net. When it was raised to the surface the net meshing stretched out between the hoops and it caught anything that was feeding in the net at the time it was raised.

Within the last couple of years there have been several types of devices developed that are being called hoop nets. These newly created devices are becoming more and more efficient and are beginning to have the design and are fishing like a trap. Section 29.80 (a)(2) prohibits the use of traps to take lobster. These newly designed devices consist of an upper and lower metal hoop. The bottom hoop is approximately 3 feet in diameter. The upper hoop is about 1-2 feet in diameter. The two hoops are separated with 3-4 rigid pieces of metal approximately 6-12 inches in length, which are connected to both hoops so the upper hoop sits about 6-12 inches above the lower hoop. Between the two hoops is mesh netting. When the device sits on the ocean floor, the top hoop is supported by rigid arms which allow the top hoop to sit above the lower hoop with mesh netting raised in between the two hoops. A lobster will climb up the outside of the mesh netting and enter the top of the device. It then climbs into the net to get to the bait. Depending on the height of the upper hoop, the lobster may or may not be able to exit the device. When the lobster needs to make a quick escape, such as when the device is moved, the lobster swims backwards into the mesh netting and cannot escape. It is also questionable whether a small lobster, once inside the net, can crawl out of the net. This could be an issue if the device was lost and the small lobster could not be released back into the open ocean waters.

Wardens in the field are also commenting on the popularity and efficiency of the newly designed devices. The wardens are finding the success of those using the new devices much greater than those using the old style hoop net that lays flat on the ocean floor until lifted. The field wardens feel some of these "devices" act like a trap, however, there is no definition of what a legal hoop net is supposed to look like. A definition of a hoop net is needed to make the methods of take for lobster enforceable.

The Department is providing two options for the definition of a hoop net for the commission to decide on which definition should be used. The definitions will include the traditional style hoop net that lies flat on the ocean floor as well as the new style device that has the second smaller ring that sits 6-12 inches off of the ocean floor.

As of July 1, 2009, the Department had entered data from 2716 lobster report cards. It is estimated that there are 22,000 to 25,000 lobster report cards to be turned in from the 2008 lobster season. Of the 2716 cards, the data showed that there were 790 people using traditional style hoop nets to take lobsters. There were 531 people using the new style devices. The current data shows that there is a 1.81 catch per outing with the old style hoop nets and a 2.43 catch per outing with the new style devices. These figures come from approximately 10% of the total lobster report cards.

By creating a definition of a hoop net that requires the main parts of the hoop net to lay flat on the ground and not have an elevated upper hoop ring, the lobster will be able to more freely move in and out of the hoop net and therefore keep the sport take of lobster at a more historical level and not have a detrimental impact on the overall lobster resource.

Since there is no current definition of a hoop net, enforcement officers have a hard time proving that a modified or newly designed device is trapping the lobster and therefore is considered a trap, which is unlawful to use. With the newly designed device, the device contains both hoops and mesh netting therefore creating a "hoop net." However the design acts as a trap at times.

The current wording in CCR T-14 29.80 (b) needs to be written in a way that makes the intention of the section more enforceable. Currently a person may not fish with more than 5 baited hoop nets south of Point Arguello while taking crabs and lobsters. The wording "fished" and "baited" make this section hard to enforce. In order to meet the elements of a crime, the nets in the water have to be baited. If the lobster or crabs eat the bait when in the water prior to the warden pulling the hoop net, there would be no violation since the net is not baited. New wording needs to be added to the section making the limit for hoop nets, a possession limit, not a "fished" limit. This way the section can be enforceable.

There is a restriction in the regulations that no hooked device be possessed while diving for crustaceans. It is common for wardens to contact divers with spears when diving for lobsters. Some of the spears have barbs (hooked devices) and some do not. Spears, such as Hawaiian slings, usually do not have barbs but do have long handles. The spear is capable of assisting in the take of lobsters without leaving spear holes in the lobster. Enforcement recommends that spears or hooked devices not be allowed to be possessed while diving or attempting to dive for crustaceans.

