

Notice of Exemption**Appendix E**

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk

County of: N/A

From: (Public Agency): CA Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244-2090

(Address)

Project Title: 2021 Recreational Clam, Sand Crab and Shrimp Gear Emergency Rule

Project Applicant: N/A

Project Location - Specific:

State intertidal waters where clams, sand crab and shrimp are taken.

Project Location - City: N/A

Project Location - County: N/A

Description of Nature, Purpose and Beneficiaries of Project:

The proposed project would amend sections 29.20 & 29.80 of Title 14, CCR, to temporarily prohibit the use of hydraulic pumps for recreational take of clam, sand crab and shrimp, and to require each person to keep clams they harvest in a separate container from clams harvested by others.

Name of Public Agency Approving Project: California Fish and Game Commission

Name of Person or Agency Carrying Out Project: California Department of Fish and Wildlife

Exempt Status: **(check one):**

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: Class 7 & 8; 14 CCR 15307 & 15308
- Statutory Exemptions. State code number: _____

Reasons why project is exempt:

Statutory exemption for emergency action applies to actions taken in response to emergencies. Class 7 and 8 categorical exemptions exempt actions for protecting natural resources and the environment, respectively. The proposed project qualifies because it is designed to help ensure sustainable take of gaper clams and prevent degradation of sensitive eel grass habitat (see attachment).

Lead Agency

Contact Person: Melissa Miller-Henson Area Code/Telephone/Extension: (916) 653-4899

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: Melissa D. Miller-Henson Date: 2/10/2021 Title: Executive Director

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Signed by Lead Agency Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

February 10, 2021

ATTACHMENT TO NOTICE OF EXEMPTION 2021 Recreational Clam, Sand Crab, and Shrimp Emergency Rule

The California Fish and Game Commission (Commission) has taken final action under the California Fish and Game Code and the Administrative Procedure Act with respect to the proposed project. On February 10, 2021, the Commission noticed and adopted an emergency action to amend sections 29.20 & 29.80 to Title 14 of the California Code of Regulations (CCR).

Statutory Exemption for Specific Actions Necessary to Prevent or Mitigate an Emergency

In compliance with the California Environmental Quality Act (CEQA; Public Resources Code Section 21000 et seq.), the Commission adopted the regulation relying on a statutory exemption contained in Public Resources Code Section 21080 (Actions Necessary to Prevent or Mitigate an Emergency). The exemption applies to agency actions to prevent or mitigate an emergency.

There is an active recreational fishery for gaper clams (also known as horseneck clams) that include the Pacific gaper (*Tresus nuttalli*) and the fat gaper (*T. capax*) in northern California. The recreational fishery for these clams takes place in intertidal areas of bays with sand and mud bottoms including Humboldt Bay, Bodega Bay, Tomales Bay, Drakes Estero, and Elkhorn Slough. Tomales and Humboldt Bays are the two most popular areas for clamming during low tides for these species.

Clammers in Tomales Bay and elsewhere have begun using a type of handheld PVC pump that hydraulically liquefies the sand around submerged clams to help facilitate clamming. This device and technique allow clammers to access still-submerged clams surrounding the bars at low tide. These submerged clams are part of the population that has not typically been accessible to clammers in the past. The rise in take became an acute problem with the advent of the COVID-19 pandemic when interest in outdoor recreation such as clamming spiked. Furthermore, wildlife officers are increasingly issuing citations for over-limits of clams, particularly to groups operating the new hydraulic pumps. It is very likely that individuals cited for gross overlimit were participating in illegal commercialization on the illegal market.

The convergence of the multiple, concurrent developments has led to a level of clamming that may be unsustainable, while also increasing the disturbance to sensitive eel grass habitats and the level of illegal-market activities.

The proposed action would temporarily prohibit the use of hydraulic pumps for the take of clams, sand crabs and shrimp. The immediate goal is to stop further unsustainable take, habitat degradation, and illegal-market activities. As such, the proposal is an activity that is the proper subject of CEQA's exemption for actions necessary to prevent or mitigate an emergency. The California Department of Fish and Wildlife will work with the Commission to develop a long-term solution while the emergency rule is in effect.

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Categorical Exemptions to Protect Natural Resources and the Environment

In compliance with CEQA, the Commission adopted the regulation by also relying on the categorical exemptions contained in the CEQA Guidelines Sections 15307 (Action by Regulatory Agencies for Protection of Natural Resources) and 15308 (Action by Regulatory Agencies for Protection of the Environment). The exemptions apply to agency actions to protect natural resources and the environment, respectively.

The proposed regulation would deter potentially unsustainable harvest of gaper clams. It would also help conserve sensitive eel grass habitats. As such, the proposal is an activity that is the proper subject of CEQA's Class 7 and 8 categorical exemptions.