

STAFF SUMMARY FOR DECEMBER 12-13, 2018

8. RECREATIONAL TAKE OF RED ABALONE**Today's Item****Information** ☐**Action** ☒

Consider adopting proposed changes to abalone regulations to extend the fishery closure sunset date for the recreational fishery.

Summary of Previous/Future Actions

- | | |
|-----------------------------------|-----------------------------------|
| • Notice hearing | Aug 22-23, 2018; Fortuna |
| • Discussion hearing | Oct 17, 2018; Fresno |
| • Today's adoption hearing | Dec 12-13, 2018; Oceanside |

Background***Proposed Amendment***

This proposal would extend the closure of the abalone fishery beyond the current Apr 1, 2019 sunset date, for another two years, until Apr 1, 2021. Effective dates for take and possession would be updated in the regulations as well, to reflect the proposed change. The proposed regulation change is necessary to facilitate recovery of the red abalone population while preparation of the red abalone fishery management plan is underway.

See Exhibit 3 for more detailed background information.

California Environmental Quality Act (CEQA)

A notice of exemption (Exhibit 4) has been drafted consistent with FGC staff's recommendation to rely on CEQA categorical exemptions (Class 7 and 8) for these regulation changes. Staff has reviewed all of the available information possessed by FGC relevant to the issue and does not believe adopting the regulation changes pose any unusual circumstances that would constitute an exception to the categorical exemptions set forth above. Compared to the activities that fall within Class 7 and Class 8 generally, there is nothing unusual about the proposed regulation changes. In addition, even if there were unusual circumstances, no potentially significant effects on either a project-specific or cumulative basis are expected.

The intent of the proposed regulation changes is to temporarily eliminate harvest pressure on the species. Therefore, FGC staff does not believe that the reliance on the categorical exemptions is precluded by the exceptions set forth in CEQA Guidelines Section 15300.2.

Significant Public Comments (N/A)**Recommendation**

FGC staff: Determine that the adoption is exempt consistent with the draft notice of exemption and adopt the proposed regulation changes as recommended by DFW.

DFW: Adopt the proposed regulation changes as detailed in the initial statement of reasons (ISOR).

STAFF SUMMARY FOR DECEMBER 12-13, 2018

Exhibits

1. [DFW memo, received Jul 30, 2018](#)
2. [ISOR](#)
3. [Staff summary from Aug 22-23, 2018 meeting, Agenda Item 12](#)
4. [Draft notice of exemption](#)
5. [Economic and fiscal impact statement \(Std. 399\)](#)

Motion/Direction

Moved by _____ and seconded by _____ that the Commission determines that the project is exempt from the California Environmental Quality Act as being categorically and adopts the proposed changes to Section 29.15, related to extending the fishery closure sunset date for the recreational red abalone fishery.

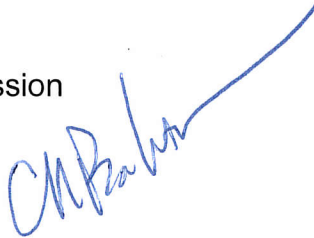
2018 JUL 30 PM 1:30

Memorandum

Date: July 26, 2018

To: Valerie Termini
Executive Director
Fish and Wildlife Commission

From: Charlton H. Bonham
Director



Subject: **Agenda Item for the August 22-23, 2018 Fish and Game Commission Meeting - Initial Statement of Reasons to Amend Section 29.15 Re: Red Abalone Regulations**

At its June 20th meeting, the Fish and Game Commission (Commission) authorized notice of its intent to amend regulations for the recreational abalone fishery to extend the fishery closure sunset date an additional two years from April 1, 2019 to April 1, 2021. Authorization of this request will allow for possible adoption at the December 12, 2018 Commission meeting.

The Department of Fish and Wildlife (Department) is submitting the attached Initial Statement of Reasons (ISOR) with a single regulatory option to extend the closure sunset date as described above.

The Department recommends the extension of the closure for the recreational abalone fishery. This recommendation is consistent with the ARMP and reflects the evidence that the abalone resource and current environmental conditions remain unchanged since adoption of the closure late last year.

If you have any questions or need additional information, please contact Dr. Craig Shuman, Marine Regional Manager at (916) 445-6459.

Attachment

ec: Stafford Lehr, Deputy Director
Wildlife and Fisheries Division
Stafford.Lehr@wildlife.ca.gov

Craig Shuman, D. Env., Regional Manager
Marine Region
Craig.Shuman@wildlife.ca.gov

Valerie Termini, Executive Director
Fish and Game Commission
July 19, 2018
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Sonke Mastrup, Program Manager
Marine Region
Sonke.Mastrup@wildlife.ca.gov

Tom Mason, Senior Environmental
Scientist (Supervisor)
Marine Region
Tom.Mason@wildlife.ca.gov

Robert Puccinelli, Captain
Law Enforcement Division
Robert.Puccinelli@wildlife.ca.gov

Mike Stefanak, Assistant Chief
Law Enforcement Division
Mike.Stefanak@Wildlife.ca.gov

Joe Milton, Senior Staff Counsel
Office of General Counsel
Joe.Milton@wildlife.ca.gov

Michelle Selmon, Program Manager
Regulations Unit
Michelle.Selmon@Wildlife.ca.gov

Karen Mitchell, Senior Environmental
Scientist (Specialist)
Regulations Unit
Karen.Mitchell@wildlife.ca.gov

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 29.15
Title 14, California Code of Regulations
Re: Recreational Take of Red Abalone

I. Date of Initial Statement of Reasons: June 27, 2018

II. Dates and Locations of Scheduled Hearings

- | | | |
|-------------------------|-----------|-------------------|
| (a) Notice Hearing: | Date: | August 22, 2018 |
| | Location: | Fortuna, CA |
| (b) Discussion Hearing: | Date: | October 17, 2018 |
| | Location: | Fresno, CA |
| (c) Adoption Hearing: | Date: | December 12, 2018 |
| | Location: | Oceanside, CA |

III. Description of Regulatory Action

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

Background Information

Red abalone is a resource currently managed by the California Department of Fish and Wildlife (Department) under the Abalone Recovery and Management Plan (ARMP), adopted by the Fish and Game Commission (Commission) in 2005. The Commission is the decision-making body that regulates the recreational take of abalone (sections 200 and 205, Fish and Game Code).

A fishery management plan (FMP) for red abalone is under development by the Department to guide future management actions for the northern California recreational fishery, separate from the ARMP. It is anticipated that the Commission will discuss this document at its October 2018 meeting and potentially consider its adoption in February 2019. Once a FMP for red abalone is adopted, the FMP will guide the future management of the red abalone fishery.

In September 2017, the Department identified wide-sweeping changes in density, occurrence, depth distribution, size and health of red abalone as well as the kelp upon which it depends for food (Commission 2017). In addition, the Department found that the average density of red abalone populations has declined below the ARMP fishery closure trigger of 0.30 abalone/m², indicating that the stock could no longer support a fishery. In response to the Department findings of a dramatic fishery wide decline of red abalone populations from severe starvation conditions, the Commission adopted regulations to

close the recreational abalone fishery consistent with the ARMP in December 2017. The Commission also adopted a sunset provision for the closure based on significant public comments received during the rulemaking process to address concerns of fishery closure for an indeterminate period. The fishery would re-open on April 1, 2019, or upon adoption of a red abalone FMP and the guidance it provides for fishery reopening, whichever comes first. The regulations closing the recreational abalone fishery became effective on March 29, 2018.

Current Regulations

Current recreational abalone fishing regulations in Section 29.15, Title 14, California Code of Regulations (CCR) specify: open areas, season, hours, daily limits, special gear provisions, measuring devices, abalone report card requirements, and minimum size limit. Subsection 29.15(i) closes all ocean waters to the take of abalone beginning on April 1, 2018. This regulation is only in effect until April 1, 2019; if the regulations are not amended to delete or extend that date (subsection 29.15(j)), the fishery will re-open on April 1, 2019, which will allow for the recreational take of abalone in open fishing areas during the open season (subsections 29.15(a), (b), and (c)).

Since the closure of the recreational fishery, the Department has found no meaningful changes in the abalone resource conditions described in the September 2017 ISOR. The Department received documented reports from the public of dead and dying abalone washed ashore at various locations in Sonoma and Mendocino counties over the 2017/18 winter and spring seasons. This information suggests that abalone continue to be weak and die due to current environmental conditions and thus no substantial positive changes since last year. The Department concludes that re-opening the fishery at this time would be inconsistent with the ARMP and would be detrimental to the recovery of the red abalone populations.

Proposed Amendment

The Commission is proposing to amend subsection 29.15(j) to extend the closure of the abalone fishery beyond the current April 1, 2019 sunset date. This proposal extends the sunset date for another two years, until April 1, 2021. Effective dates for take and possession contained in subsections 29.15 (a), (b) and (c) of the abalone fishing regulations would be updated as well to reflect the proposed change.

This proposal allows for consideration of a fishery re-opening prior to reaching full recovery (i.e., re-opening the fishery before density standards are fully realized under the ARMP or a red abalone FMP upon adoption by the Commission). The Department recommends, however, consideration of the management triggers in the ARMP (or a Red Abalone FMP once adopted by the Commission) to determine whether re-opening the fishery to recreational harvesting is warranted.

This proposed regulatory change is necessary to facilitate recovery of the red abalone population while the preparation of the Red Abalone FMP is currently underway.

(b) Goals and Benefits of the Regulation:

The policy of this State is “to ensure the conservation, sustainable use, and, where feasible, restoration of California’s marine living resources for the benefit of all the citizens of the State” (Fish and Game Code section 7050(b)). The proposed regulation changes are intended to facilitate the red abalone population’s recovery from the multi-year poor environmental conditions and massive losses of red abalone fishery stock.

The proposed extension of the red abalone fishery closure will benefit the valuable red abalone resource by protecting it from fishing mortality during the current poor environmental conditions. Further conserving the red abalone resource now will allow it the opportunity to rebuild and be sustainable for the future.

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

Authority: Sections 200, 205, 260, 265, 399, 5520, 5521, and 7149.8, Fish and Game Code.

Reference: Sections 200, 205, 265, 275, 5520, 5521, 7145 and 7149.8, Fish and Game Code.

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

None.

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

California Department of Fish and Wildlife. 2005. Abalone Recovery and Management Plan. <https://www.wildlife.ca.gov/Conservation/Marine/ARMP>.

Fish and Game Commission. (Commission 2017). Initial Statement of Reasons for Regulatory Action to Amend Section 29.15, Title 14, California Code of Regulations, Re: Abalone Regulations. http://www.fgc.ca.gov/regulations/2017/29_15isor.pdf.

(f) Public Discussions of Proposed Regulations Prior to Notice Publication:

June 20, 2018. Sacramento, California. The Department briefed the Commission on the status of the Red Abalone FMP and discussed potential changes to abalone regulations to amend the fishery closure sunset date.

IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change:

Limited Fishery: A limited recreational abalone fishery (i.e., varying the degree in which the fishery is re-opened to allow for some fishing opportunity) was considered and rejected. This option is not deemed viable at this time because the Department has found no meaningful changes in three red abalone resource conditions: fishing grounds, health, and

reproduction. No other alternatives were identified by or brought to the attention of Commission staff that would have the same desired regulatory effect.

(b) No Change Alternative:

Without the proposed regulatory change, the recreational red abalone fishery will re-open on April 1, 2019, and recreational abalone fishing regulations will revert to those that existed before the 2016 emergency rulemaking. Evidence exists that levels of take prior to the emergency rulemaking will be unsustainable under current environmental and stock health conditions. The no change alternative is not consistent with established ARMP triggers and management measures.

(c) Description of Reasonable Alternatives That Would Lessen Adverse Impact on Small Business:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

V. Mitigation Measures Required by Regulatory Action

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the regulatory action is not likely to significantly increase compliance costs, may or may not significantly impact fishery activity, and only applies to a fishery that is unique to the state of California.

(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; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California

The Commission anticipates no impacts on the creation or elimination of jobs within the state; no impact on the creation of new businesses or the elimination of existing businesses or the expansion of businesses in California; generalized benefits to the health and welfare of California residents; no effects on worker safety; and benefits to the State's environment. The proposed action is designed to ensure the sustainability and quality of the fishery, promoting participation, fishing activity, and economic activity.

(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.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

No new costs or savings to State agencies. However, the proposed abalone fishery closure would result in the continued reduction in abalone report card sales with revenue deficits to the California Department of Fish and Wildlife of about \$533,375 for the 2019-20 and 2020-21 fiscal years based on the typical sales of 25,100 at \$21.25 per card. Federal funding to the state would not be impacted by this proposed change in recreational abalone fishing regulations.

(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, Government Code: None.

(h) Effect on Housing Costs: None.

VII. Economic Impact Assessment

Without the proposed changes, the recreational abalone fishery will re-open on April 1, 2019. Amendments to the fishery closure provision for red abalone are to preserve the sustainability of the resource and, thus, the long-term viability of the fishery that should continue to draw economic benefit to coastal communities in the fishery area. An economic impact analysis (Commission 2017) evaluated the effect of a full fishery closure as well as options for a limited fishery. The economic impact associated with an extended closure of the fishery is expected to remain more or less the same as the full fishery closure option evaluated in the 2017 ISOR.

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

The Commission anticipates no negative impacts on the creation or elimination of jobs within the state. Since the closure of the abalone fishery on April 1, 2018, no changes in employment is anticipated in direct relation to the proposed changes. The proposed action is designed to ensure the sustainability and quality of the fishery, promoting participation, fishing activity, and economic activity.

(b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

The Commission does not anticipate the impact of continued closure of the red abalone fishery to be a principle impetus for the creation of new businesses or the elimination of existing businesses within the state. Since the closure of the abalone fishery on April 1, 2018, no change is anticipated in direct relation to the creation of new businesses or the elimination of existing businesses within the state from the proposed action. Extending the fishery closure is only proposed to preserve the sustainability of the abalone resource and, thus, the long-term viability of the fishery that may then continue to support fishery related businesses.

(c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

The Commission does not anticipate the impact of continued closure of the red abalone fishery to have a significant impact on the expansion of businesses currently doing business within the state. Extending the fishery closure is only proposed to preserve the sustainability of the resource and, thus, the long-term viability of the fishery that may then continue to support fishery-related businesses.

(d) Benefits of the Regulation to the Health and Welfare of California Residents:

The Commission anticipates generalized benefits to the health and welfare of California residents through the sustainable management of the red abalone fishery.

(e) Benefits of the Regulation to Worker Safety: None.

(f) Benefits of the Regulation to the State's Environment:

The Commission anticipates benefits to the State's environment. It is the policy of this State to ensure "the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the State" (Fish and Game Code sections 1700, 7050(b)).

(g) Other Benefits of the Regulation: None.

Informative Digest/Policy Statement Overview

Red abalone is a resource currently managed by the California Department of Fish and Wildlife (Department) under the Abalone Recovery and Management Plan (ARMP). The Fish and Game Commission (Commission) is the decision-making body that regulates the recreational take of abalone (sections 200 and 205, Fish and Game Code).

In September 2017, the Department identified wide-sweeping changes in density, occurrence, depth distribution, size and health of red abalone as well as the kelp upon which it depends for food. In addition, the Department found that the average density of red abalone populations has declined below the ARMP fishery closure trigger (0.30 abalone/m²), indicating that the stock could no longer support a fishery. In December 2017, the Commission adopted regulations to close the abalone fishery consistent with the ARMP and Department findings. The Commission also adopted a sunset provision for the closure; the fishery would re-open on April 1, 2019, or upon adoption of a Red Abalone Fishery Management Plan (FMP) and the guidance it provides for fishery reopening, whichever comes first. The regulations closing the recreational abalone fishery became effective on March 29, 2018.

Current recreational abalone fishing regulations in Section 29.15, Title 14, California Code of Regulations (CCR) specify: open areas, season, hours, daily limits, special gear provisions, measuring devices, abalone report card requirements, and minimum size limit. Subsection 29.15(i) closes all ocean waters to the take of abalone beginning on April 1, 2018. This regulation is only in effect until April 1, 2019; if the regulations are not amended to delete or extend that date (subsection 29.15(j)), the fishery will re-open on April 1, 2019, which will allow for the recreational take of abalone in open fishing areas during the open season (subsections 29.15(a), (b), and (c)).

Since the closure of the recreational fishery, the Department has found no meaningful changes in the abalone resource conditions. The limited data the Department has from public reports of dead or dying abalone washing ashore during this past winter and spring corroborates the findings of no meaningful positive changes. Department concludes that re-opening the fishery at this time would be inconsistent with the ARMP and detrimental to the recovery of the fishery. The Commission is proposing to amend subsection 29.15(j) to extend the closure of the abalone fishery for another two years, until April 1, 2021. Effective dates for take and possession contained in subsections 29.15 (a), (b) and (c) of the abalone fishing regulations would be updated as well to reflect the proposed change. The action is necessary to facilitate recovery of the red abalone population while the preparation of the Red Abalone FMP is currently underway.

Benefits of the Regulations

The proposed extension of the red abalone fishery closure will benefit the valuable red abalone resource by protecting it from fishing mortality during the current poor environmental conditions. Further conserving the red abalone resource now will allow it the opportunity to rebuild and be sustainable for the future.

Consistency and Compatibility with Existing Regulations

The Legislature has delegated authority to the Commission to promulgate recreational fishing regulations (Fish and Game Code, sections 200, 205, and 265); no other state agency has the

authority to promulgate such regulations. The Commission has conducted a search of Title 14, CCR and determined that the proposed regulation is neither inconsistent nor incompatible with existing State regulations and that the proposed regulations are consistent with other recreational fishing regulations and marine protected area regulations in Title 14, CCR.

Proposed Regulatory Language

Section 29.15, Title 14, CCR, is amended to read:

§ 29.15. Abalone

(a) Effective April 1, ~~2019~~2021: Open Area: Except in the area described in subsection (a)(1) below, abalone may only be taken north of a line drawn due west magnetic from the center of the mouth of San Francisco Bay. No abalone may be taken, landed, or possessed if landed south of this line.

(1) No Abalone may be taken in the Fort Ross area bounded by the mean high tide line and a line drawn due south true from 38°30.63' N, 123°14.98' W (the northern point of Fort Ross Cove) and a line drawn due west true from 38° 29.45' N, 123°11.72' W (Jewel Gulch, south boundary Fort Ross State Park).

(b) Effective April 1, ~~2019~~2021: Open Season and Hours:

(1) Open Season: Abalone may be taken only during the months of April, May, June, August, September, October and November.

(2) Open Hours: Abalone may be taken only from 8:00 AM to one-half hour after sunset.

(c) Effective April 1, ~~2019~~2021: Bag Limit and Yearly Trip Limit: Three red abalone, *Haliotis rufescens*, may be taken per day. No more than three abalone may be possessed at any time. No other species of abalone may be taken or possessed. Each person taking abalone shall stop detaching abalone when the limit of three is reached. No person shall take more than 18 abalone during a calendar year. In the Open Area as defined in subsections 29.15(a) and 29.15(a)(1) above, not more than 9 abalone of the yearly trip limit may be taken south of the boundary between Sonoma and Mendocino Counties.

(d) Minimum Abalone Size: All red abalone must be seven inches or greater measured along the longest shell diameter. All legal size abalone detached must be retained. No undersized abalone may be brought ashore or aboard any boat, placed in any type of receiver, kept on the person, or retained in any person's possession or under his control. Undersize abalone must be replaced immediately to the same surface of the rock from which detached. Abalones brought ashore shall be in such a condition that the size can be determined.

(e) Special Gear Provisions: The use of SCUBA gear or surface supplied air to take abalone is prohibited. Abalone may not be taken or possessed aboard any boat, vessel, or floating device in the water containing SCUBA or surface supplied air. Abalone may be taken only by hand or by devices commonly known as abalone irons. Abalone irons must be less than 36 inches long, straight or with a curve having a radius of not less than 18 inches, and must not be less than 3/4 inch wide nor less than 1/16 inch thick. All edges must be rounded and free of sharp edges. Knives, screwdrivers and sharp instruments are prohibited.

(f) Measuring Device. Every person while taking abalone shall carry a fixed caliper measuring gauge capable of accurately measuring seven inches. The measuring device shall have fixed opposing arms of sufficient length to measure the abalone by placing the gauge over the shell.

(g) Abalone Possession and Transportation:

Abalones shall not be removed from their shell, except when being prepared for immediate consumption.

(1) Individuals taking abalone shall maintain separate possession of their abalone. Abalone may not be commingled in a float tube, dive board, dive bag, or any other container or device,

- until properly tagged. Only after abalones are properly tagged, as described in Section 29.16(b), Title 14, CCR, may they be commingled with other abalone taken by another person.
- (h) Report Card Required: Any person fishing for or taking abalone shall have in their possession a nontransferable Abalone Report Card issued by the department and shall adhere to all reporting and tagging requirements for abalone defined in Sections 1.74 and 29.16, Title 14, CCR.
- (i) Effective April 1, 2018: All ocean waters are closed to the take of abalone. Abalone may not be taken or possessed. The following exceptions are for abalone in possession prior to April 1, 2018:
- (1) Minimum Abalone Size: All red abalone must be seven inches or greater measured along the longest shell diameter.
- (2) Abalone Possession and Transportation: It shall be unlawful to possess any untagged abalone or any abalone that have been removed from their shell, except when they are being prepared for immediate consumption.
- (j) This subsection and subsection (i) shall remain in effect only until April 1, ~~2019~~2021, and as of that date are repealed, unless a later enacted amendment deletes or extends that date.

Note: Authority cited: Sections 200, 205, 260, 265, 399, 5520, 5521 and 7149.8, Fish and Game Code. Reference: Sections 200, 205, 265, 275, 5520, 5521, 7145 and 7149.8, Fish and Game Code.

STAFF SUMMARY FOR AUGUST 22-23, 2018**12. RED ABALONE****Today's Item****Information** ☐**Action** ☒

Consider authorizing publication of notice of intent to amend regulations to extend the fishery closure sunset date for the recreational red abalone fishery.

Summary of Previous/Future Actions

- | | |
|---------------------------------|---------------------------------|
| • Today's notice hearing | Aug 22-23, 2018; Fortuna |
| • Discussion hearing | Oct 17-18, 2018; Fresno |
| • Adoption hearing | Dec 12-13, 2018; Oceanside |

Background

In Sep 2017, DFW identified sweeping changes in density, occurrence, depth distribution, size and health of red abalone as well as the kelp upon which it depends for food. In addition, DFW found that the average density of red abalone populations has declined below the Abalone Recovery and Management Plan (ARMP) fishery closure trigger of 0.30 abalone per square meter, indicating that the stock could no longer support a fishery.

In response to the DFW findings of a dramatic fishery-wide decline of red abalone populations from severe starvation conditions, in Dec 2017 FGC adopted regulations to close the recreational abalone fishery consistent with the ARMP. FGC also adopted a sunset provision for the closure based on significant public comments received during the rulemaking process to address concerns about having a fishery closure for an indeterminate period. Under existing regulations, the fishery would re-open on Apr 1, 2019, or upon adoption of a red abalone fishery management plan (FMP) and the guidance it provides for fishery reopening, whichever comes first.

The regulations closing the recreational abalone fishery became effective on Mar 29, 2018. If the existing regulations are not amended to delete or extend the sunset date (subsection 29.15(j)), the fishery will re-open on Apr 1, 2019, which will allow for the recreational take of abalone in open fishing areas during the open season (subsections 29.15(a), (b), and (c)).

Since the closure of the recreational fishery, DFW has found no meaningful changes in the abalone resource conditions described in the Sep 2017 initial statement of reasons. DFW received documented reports from the public of dead and dying abalone washed ashore at various locations in Sonoma and Mendocino counties over the 2017/18 winter and spring seasons. This information suggests that abalone continue to be weak and die due to current environmental conditions and, thus, there are no substantial positive population changes since last year. DFW concludes that re-opening the fishery at this time would be inconsistent with the ARMP and would be detrimental to the recovery of red abalone populations.

Proposed Amendment

DFW proposes to extend the closure of the abalone fishery beyond the current Apr 1, 2019 sunset date for another two years, until Apr 1, 2021. Effective dates for take and possession

STAFF SUMMARY FOR AUGUST 22-23, 2018

contained in the abalone fishing regulations would be updated as well to reflect the proposed change.

DFW's proposal allows for consideration of a fishery re-opening prior to reaching full recovery (i.e., re-opening the fishery before density standards are fully realized under the ARMP or a red abalone FMP upon adoption by FGC). DFW recommends, however, considering the management triggers in the ARMP or a red abalone FMP once adopted by FGC to determine whether re-opening the fishery to recreational harvesting is warranted. The proposed regulation change is necessary to facilitate recovery of the red abalone population while preparation of the red abalone FMP is currently underway.

Public Comments (N/A)**Recommendation**

FGC staff: Authorize publication of the notice as recommended by DFW.

DFW: Authorize publication of the notice as detailed in the draft initial statement of reasons (ISOR).

Exhibits

1. DFW memo, received Jul 30, 2018
2. Draft ISOR

Motion/Direction

Moved by _____ and seconded by _____ that the Fish and Game Commission authorizes publication of a notice of its intent to amend Section 29.15, related to recreational red abalone fishing regulations.

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
1416 Ninth Street, Room 1320
Sacramento, CA 95814

(Address)

Project Title: Amend § 29.15, Title 14, CCR, Abalone take reduction due bad environmental conditions

Project Applicant: N/A

Project Location - Specific:

Statewide

Project Location - City: N/A

Project Location - County: N/A

Description of Nature, Purpose and Beneficiaries of Project:

A combination of environmental and biological stressors has greatly reduce abalone populations due to starvation conditions. In 2016, the Commission took emergency action to reduce the annual take limit and close the season in April and November. This project will continue the emergency regulations protection.

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: Cal. Code Regs., tit. 14, §§ 15307, 15308
- ☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt:

See attached.

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: _____ Date: 12/12/2018 Title: Acting Executive Director

☒ 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: _____

December 12, 2018

**ATTACHMENT TO NOTICE OF EXEMPTION
Adoption of Red Abalone Take Reduction
Due to Harmful Environmental Conditions**

The California Fish and Game Commission (Commission) has taken final action under the Fish and Game Code and the Administrative Procedure Act (APA) with respect to the proposed project on December 12, 2018. In taking its final action for the purposes of the California Environmental Quality Act (CEQA, Pub. Resources Code, § 21000 *et seq.*), the Commission adopted the regulations relying on the categorical exemption for "Actions by Regulatory Agencies for Protection of Natural Resources" contained in CEQA Guidelines section 15307, and the categorical exemption for "Actions by Regulatory Agencies for Protection of the Environment" contained in CEQA Guidelines section 15308. (Cal. Code Regs., tit. 14, §§ 15307, 15308.)

Categorical Exemptions to Protect Natural Resources and the Environment

In adopting the sport fishing regulations for red abalone take reduction due to harmful environmental conditions, the Commission relied for purposes of CEQA on the Class 7 and 8 categorical exemptions. In general, both exemptions apply to agency actions to protect natural resources and the environment. The regulations define annual fishing seasons and daily and yearly bag limits. A combination of unprecedented environmental and biological stressors began to take their toll on abalone populations, including warmer-than-normal waters and decreasing food resources, leading to starvation conditions. The Department of Fish and Wildlife (Department) has identified wide-sweeping changes in the density, occurrence, size and health of red abalone and the kelp upon which it depends for food. Because these regulations are intended to protect the sustainability of the fishery as a natural resource, Commission adoption of these regulations is an activity that is the proper subject of CEQA's Class 7 and 8 categorical exemptions.

December 12, 2018

**ATTACHMENT TO NOTICE OF EXEMPTION
Adoption of Red Abalone Take Reduction
Due to Harmful Environmental Conditions**

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**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME Fish and Game Commission	CONTACT PERSON Melissa Miller-Henson melissa.miller-henson@fgc.ca.gov	EMAIL ADDRESS -henson@fgc.ca.gov	TELEPHONE NUMBER 916-653-6184
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Amendments to Section 29.15. Title 14, CCR, Re: Abalone Regulations			NOTICE FILE NUMBER Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|--|---|
| <input checked="" type="checkbox"/> a. Impacts business and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input checked="" type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input checked="" type="checkbox"/> c. Impacts jobs or occupations | <input checked="" type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input type="checkbox"/> h. None of the above (Explain below): |

*If any box in Items 1 a through g is checked, complete this Economic Impact Statement.**If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.*2. The Fish and Game Commission estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

- ☐ Below \$10 million
- ☐ Between \$10 and \$25 million
- ☒ Between \$25 and \$50 million
- ☐ Over \$50 million *(If the economic impact is over \$50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c))*

3. Enter the total number of businesses impacted: 100-200Describe the types of businesses (Include nonprofits): Recreat'l services, sports equip. sales/rent, retail, food/accommodations, auto/fuelEnter the number or percentage of total businesses impacted that are small businesses: ~ 80%4. Enter the number of businesses that will be created: 0 eliminated: 0Explain: Continued reduced spending by about 25K abalone fishers not enough to cause the creation/elimination of businesses5. Indicate the geographic extent of impacts: ☐ Statewide
☒ Local or regional (List areas): Sonoma, Marin, Mendocino, Humboldt, Del Norte6. Enter the number of jobs created: 0 and eliminated: none anticipatedDescribe the types of jobs or occupations impacted: Retail clerks, food service, hotel/motel/campground staff7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here? ☐ YES ☒ NOIf YES, explain briefly: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)**B. ESTIMATED COSTS** *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ 26.7M
- a. Initial costs for a small business: \$ 21K revenue loss Annual ongoing costs: \$ 0 Years: 1
- b. Initial costs for a typical business: \$ 21-42K revenue loss Annual ongoing costs: \$ 0 Years: 1
- c. Initial costs for an individual: \$ 0 Annual ongoing costs: \$ 0 Years: 1
- d. Describe other economic costs that may occur: Initial costs to businesses are estimated with the abalone fishing trip direct expenditure (\$18.6 M per season). Total statewide dollar costs include the direct, indirect, and induced costs (\$26.7 M) from an IMPLAN model.
2. If multiple industries are impacted, enter the share of total costs for each industry: Share of revenue losses: 29% Food and Retail/Wholesale; 27% Lodging and Accommodations; 20% Auto Service/Fuel; 18% Sporting Equipment Sales/Rent/Lease; 6% Boat Maintenance.
3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted. \$ N/A
4. Will this regulation directly impact housing costs? ☐ YES ☒ NO
If YES, enter the annual dollar cost per housing unit: \$ _____
Number of units: _____
5. Are there comparable Federal regulations? ☐ YES ☒ NO
Explain the need for State regulation given the existence or absence of Federal regulations: Recreat'l abalone is exclusively state-managed fishery
Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: Regulating the recreational abalone fishery during this environmentally challenging time to result in long-term benefits to sport fishers and businesses by maintaining a sustainable north coast abalone fishery and future harvest opportunities. Benefits include improved health of the overall marine ecosystem, thereby supporting other commercially and recreationally important fisheries in the north coast.
2. Are the benefits the result of: ☐ specific statutory requirements, or ☒ goals developed by the agency based on broad statutory authority?
Explain: Fish and Game Commission statutory authority
3. What are the total statewide benefits from this regulation over its lifetime? \$ uncertain sustainability
4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: N/A

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: Option 1: Full fishery closure;
Option 2: Limited re-opening of abalone fishery; Option 3: No change would permit the lapse of emergency closure and re-opening to 2016 regulatory conditions.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ restoration Cost: \$ 26.7M

Alternative 1: Benefit: \$ limited Cost: \$ 6.7-13.4M

Alternative 2: Benefit: \$ limited Cost: \$ overfish risk

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives:

Benefits of proposed reg. is to restore abalone and the future viability of fishery. Benefits with opening are limited due to poor conditions of fishery. Total costs include multiplier.

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs?

☐ YES☒ NO

Explain: Specific prescriptive regulations are more fairly enforced in the recreational abalone fishery.

E. MAJOR REGULATIONS *Include calculations and assumptions in the rulemaking record.*

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises **exceed \$10 million**? ☐ YES ☐ NO*If YES, complete E2. and E3**If NO, skip to E4*

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

☐ YES☒ NO

If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: _____

The incentive for innovation in products, materials or processes: _____

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT**A. FISCAL EFFECT ON LOCAL GOVERNMENT** *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

- ☐ 1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

- ☐ a. Funding provided in _____

Budget Act of _____ or Chapter _____, Statutes of _____

- ☐ b. Funding will be requested in the Governor's Budget Act of _____

Fiscal Year: _____

- ☐ 2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

- ☐ a. Implements the Federal mandate contained in _____

- ☐ b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

- ☐ c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

- ☐ d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

- ☐ e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

- ☐ f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

- ☐ g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

- ☐ 3. Annual Savings. (approximate)

\$ _____

- ☐ 4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

- ☐ 5. No fiscal impact exists. This regulation does not affect any local entity or program.

- ☒ 6. Other. Explain The number of abalone fishers' visits and local spending will remain similar to previous closure, which may result in lower than
usual levels of local sales & transient occupancy tax revenue to local governments on the north coast.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT (CONTINUED)**B. FISCAL EFFECT ON STATE GOVERNMENT** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

It is anticipated that State agencies will:☐ a. Absorb these additional costs within their existing budgets and resources.☐ b. Increase the currently authorized budget level for the _____ Fiscal Year☐ 2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

☐ 3. No fiscal impact exists. This regulation does not affect any State agency or program.

☒ 4. Other. Explain Continued CDFW loss of abalone report card sales revenue. Since the fishery will remain completely closed, the Department of Fish and Wildlife would expect a deficit of approximately \$533K in annual report cards sales.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

☐ 2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

☒ 3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.☐ 4. Other. Explain _____

FISCAL OFFICER SIGNATURE



DATE

8/8/18

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY



DATE

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER



DATE

**STATE OF CALIFORNIA
FISH AND GAME COMMISSION
STD. 399 CALCULATIONS WORKSHEET**

Amend Section 29.15,
Title 14, California Code of Regulations
Re: Abalone Regulations

**Economic Impact Statement
Methods and Data Sources:**

- 2012 - 2017 Abalone cardholder telephone survey (~1,870 subjects) results were used in the qualitative assessment of potential impacts. Questions about Abalone activities: trips, expenditures, overnight stays, abalone take, household income, point of origin, destinations, boat use, age, overall quality of experience (CDFW Marine Branch).
- 2014 – 2018 License sales numbers, Abalone cardholder zip code of origin (CDFW License & Revenue Branch)
- (IMPLAN) Multipliers derived for Sonoma, Marin, Mendocino, Humboldt, and Del Norte counties for the total economic impact analysis of the 2017 regulatory options.
- (IMPLAN) Businesses impacted: 29% Food & Retail/Wholesale; 27% Lodging & Accommodations; 20% Auto Service/Fuel; 18% Sporting Equipment Sales/Rent/Lease; 6% Boat Maintenance.
- Reported Total Economic Impact = Direct + Indirect + Induced Effects.
 - I. Direct Effect = Visitor spending
 - II. Indirect Effect = Inter-Business spending of visitor spending
 - III. Induced Effect = Employee spending from additional business spending

Job impacts are estimated with a ratio of 13.4 jobs per \$1M output, (derived from IMPLAN). Projections are relative to employment levels associated with recreational abalone harvest and business activities calculated from annual averages from 2014 through 2018.

Quantification Issues:

Predicting Visitor Spending Response to Regulatory Change

Recreational fishing spending does not necessarily change in step with changes in bag

limits. Participants may make the same number of visits, fewer visits, fewer overnight stays, and/or shorter lengths of stay to harvest fewer abalones. Effort may increase or transfer to the pursuit of different species or entirely out of fishing towards other recreational pursuits in the area.

Travel costs and related expenditures can approximate what sport fishers are willing to pay in order to access and enjoy the pursuit of abalone resources. Abalone has no like-substitutes and cannot be pursued in many areas outside of the Northern California coast. Proposed regulatory options that would place limits on take may be enough to induce some to not undergo the direct and incidental costs involved in abalone fishing. However, for some, the consumer surplus (the value in excess of the dollar value of the abalone, fuel, food, lodging and other costs) could be high enough to continue to participate in the sport fishery activity. Consequently, expenditure information alone may underestimate the true value, monetary and non-monetary, of the resource to sport fishery participants.

While quantitative estimates can give a sense of the magnitude of economic effect, reasoned predictions that are informed by field observation, survey data, public comment, and years of experience in fisheries management provide the nuance. Many variables affect potential recreational fishing effort in addition to seasons, bag limits and possession limits. As such, the choices of people may be swayed by any number of factors unrelated to fish and game regulations. The quality of the targeted resource, gas prices, the timing of low tides, weather conditions, and competing recreational options are just some of the possible influences that may introduce uncertainty in quantifying the economic effects of regulatory options.

Fiscal Impact Statement

A. Fiscal Effect on Local Government

6. Other

Potential for a continuation of some reduction in local sales tax and transient occupancy tax revenue to local governments in the north coast fishery areas.

Tax Revenue Impact Projections Methods

Sales Tax

The proposed abalone regulatory action was evaluated as to what extent it would impact visits to each fishery area and length of stay to each area. The activities involve participant expenditures in the retail, food and accommodations, automotive service and fuel, sporting equipment sales/rent/lease, and recreational services sectors. Direct expenditures generate local sales and transient occupancy taxes for the fishery area local governments. The California State Board of Equalization reports local sales tax rates for the areas under evaluation. Local sales tax rates in Sonoma, Marin, Mendocino, Humboldt, and Del Norte counties range from 1.5% to 2.5%. The continued

reduced spending due to reduced numbers of visits and reductions in the length of stay could continue to result in sales tax revenue losses that range from \$66,750 to \$133,500 or \$200,250 to \$267,000 over the season.

Transient Occupancy Tax (TOT)

Abalone fishers' survey responses reveal that those who travel a greater distance to the fishery area are more likely to choose to stay overnight in the area. Those fishers who live in the closest proximity to harvest sites and those who harvest in the earliest hours of the day show a lower likelihood of staying overnight. Overnight stays are often at private campgrounds, motels and hotels, all of which collect TOTs. County treasurer tax collectors report the county transient occupancy taxes. TOT rates in Sonoma, Marin, Mendocino, Humboldt and Del Norte counties range from 9% to 10%. The projected continued loss in overnight stays range from 1,000 to 10,000 nights, which could result in the continued loss in local TOT revenues to local governments from \$7,600 to \$76,000 over the season.

B. Fiscal Effect on State Government

4. Other

No new costs or savings anticipated for State agencies. The California Department of Fish and Wildlife program costs will remain unchanged, while there will be no abalone report card sales with the extension of the abalone fishery closure. CDFW will incur an estimated \$533,375 revenue deficit from the loss of the average sales of 25,100 cards at the 2018 fee amount of \$21.25.

Department of Fish and Wildlife (DFW) Revenue Impact Projections Methods

Changes in Abalone Report Card Sales

Estimates of card sales losses or gains are based on DFW License and Revenue Branch sport fishing license volume and revenue historical records. Surveys of the abalone fishing community, fishers and businesses also inform these estimates.

A continued closure would result in the continued drop in abalone report card sales (25,100 cards at \$21.25 each) with revenue losses of about \$533,375 for the 2019-20 fiscal year. Abalone report card sales revenue deficits are anticipated for the duration of the proposed closure through the 2020-21 fiscal year as shown in Table 1.

Table 1: Projected Revenue Loss

Fiscal Year	Projected Report Card Revenue Loss
2019-20	\$533,375
2020-21	\$533,375