

STAFF SUMMARY FOR AUGUST 16, 2017

19. RECREATIONAL ABALONE**Today's Item****Information** ☐**Action** ☒

Authorize publication of notice of intent to amend red abalone regulations.

Summary of Previous/Future Actions

- | | |
|---------------------------------|---------------------------------|
| • Adopted emergency regulations | Dec 7, 2016; San Diego |
| • MRC vetting | Jul 20, 2017; MRC, Petaluma |
| • Today's notice hearing | Aug 16, 2017; Sacramento |
| • Discussion hearing | Oct 11-12, 2017; Atascadero |
| • Adoption hearing | Dec 6-7, 2017; San Diego |

Background

On Dec 7, 2016, FGC took emergency action to reduce the recreational annual limit and the season for abalone fishing due to harmful ocean conditions affecting both the fishing grounds and health of red abalone (see Agenda Item 18).

DFW has not observed any significant improvement to the oceanic conditions and health of the red abalone resource in 2017 following emergency action, and anticipates that additional management constraints are likely warranted beyond the emergency measures. Therefore, concurrent to the request to re-adopt the emergency regulations under Agenda Item 18, DFW requests that FGC authorize notice of intent to amend Section 29.15 through a standard rulemaking for the continued protection of the red abalone resource for the 2018 season.

At the Jul MRC meeting, DFW highlighted a range of catch reduction management measures within several management categories; MRC requested that, for the Aug FGC meeting, DFW analyze specific options within those categories as discussed, excluding the option of a total fishery closure and additionally analyzing possible rotating partial closures (see MRC recommendation). Based on discussions at the Jul MRC meeting, the regulatory options DFW recommends for possible inclusion in the initial statement of reasons (ISOR) include: (1) further reduce the annual limit, (2) reduce the daily bag/possession limit, (3) change the season length, (4) implement individual site closures, and (5) implement county closures with a limitation on report cards. The regulation would encompass the area open to recreational harvest of red abalone north of San Francisco Bay pursuant to Fish and Game Code Section 5521 and Section 29.15.

DFW will share initial 2017 dive survey results at the Aug FGC meeting that may help further clarify regulatory options for the ISOR.

Significant Public Comments

1. Statement from a fisherman's perspective that a size increase is far more acceptable than site or fishery closures. Requests that a size limit increase be considered as an alternative because increasing the size limit would (1) reduce actual landings (total allowable catch) because of the decrease in the number of available legal abalone

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and (2) allow abalone more time to reproduce prior to becoming legal for harvest. The fisherman believes this to be consistent with DFW managers' main concern of reduced reproduction due to absence of kelp/food and competition from "exploding" urchin populations. See Exhibit 2.

2. Comments from a former consultant to the California Abalone Association: (1) Does not consider DFW's reports of abalone status in California to be trustworthy, and does not believe DFW has carried out appropriate management strategies; and (2) states that Amendment H in the Abalone Recovery and Management Plan could provide relief by reducing fishing pressure in northern California by opening south-central and southern California as alternative fishing grounds. Further states that it would appear within the power of FGC to immediately open San Miguel Island to red abalone fishing. See Exhibit 3.

Recommendation

FGC staff: Authorize publication of notice.

MRC: Select range of options for catch reduction measures to include in the ISOR, excluding a total fishery closure and adding possible rotating partial closures, from options to be identified by DFW at the Aug FGC meeting.

DFW: Select range of options to include in the ISOR and authorize publication of notice. DFW anticipates that at the FGC meeting it will recommend limiting options to changes to the annual/daily bag limit and possible site closures to increase regulatory simplicity.

Exhibits

1. [DFW memo, received Aug 3, 2017](#)
2. [Email from Jack Likins, received Aug 1, 2017](#)
3. [Email from Steven L. Rebuck, received Aug 1, 2017](#)

Motion/Direction

Moved by _____ and seconded by _____ that the Commission authorizes publication of a notice of its intent to amend Section 29.15, related to red abalone regulations with the range of options as presented and recommended by the Department.

OR

Moved by _____ and seconded by _____ that the Commission authorizes publication of a notice of its intent to amend Section 29.15, related to red abalone regulations with the range of options as presented and recommended by the Department except _____.

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION

2017 AUG -3 AM 11:15

Memorandum

Date: July 31, 2017

To: Valerie Termini, Executive Director
Fish and Game Commission

From: Charlton H. Bonham
Director



Subject: **Request for Commission Approval for Notice to Amended Section 29.15 Re: Red Abalone Regulations**

The Department of Fish and Wildlife (Department) requests the Fish and Game Commission (Commission) authorize publishing notice of its intent to amend Section 29.15 of Title 14, California Code of Regulations concerning recreational take of red abalone. Authorization of this request to publish notice at the August 2017 Commission meeting will allow for discussion and possible adoption at the October and December, 2017 Commission meetings, respectively.

On December 7, 2016, the Commission took emergency action to reduce the recreational annual limit and the months of the year opened to abalone fishing due to harmful environmental conditions affecting both the fishing grounds and health of red abalone. Specifically, the emergency action reduced the annual recreational limit from 18 to 12 abalone (except for Sonoma County, which the bag limit remains at 9 abalone) and reduced the months during which abalone may be taken from 7 to 5 months by closing April and November for the recreational fishery. The Department has requested the Commission take action at its August 2017 meeting to re-adopt the emergency regulations for an additional 90-day period as the initial emergency regulations are set to expire on September 29, 2017.

The Department has not observed any significant improvement to the environmental conditions and health of the red abalone resource in 2017. Therefore, concurrent to the request to re-adopt the emergency regulations, the Department requests that the Commission authorize notice of intent to amend Section 29.15 through a standard rulemaking for the continued protection of the red abalone resource. Based on discussions at the July MRC meeting, the regulatory options that should be considered for inclusion in the Initial Statement of Reasons (ISOR) include: 1) further reduction of the annual limit; 2) possible reduction to the daily bag/possession limit; 3) changes to the season length; 4) site closures; and 5) possible county closures with a limitation on report cards. The regulations would encompass the area open to recreational harvest of red abalone north of San Francisco Bay pursuant to Fish and Game Code Section 5521 and Section 29.15 of Title 14 of the California Code of Regulations.

Valerie Termini, Executive Director
Fish and Game Commission
July 31, 2017
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To increase simplicity for the 2018 season, the Department anticipates it will recommend limiting options to changes to the annual/daily bag limit and possible site closures. The Department will share initial 2017 dive survey results at the August meeting that may help further clarify regulatory options for notice.

If you have any questions or need additional information, please contact Dr. Craig Shuman, Marine Region Regional Manager at (805) 568-0216.

cc: 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

Sonke Mastrup, Program Manager
State Managed Invertebrate Fisheries
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

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

Scott Barrow, Acting Program Manager
Regulations Unit
Scott.Barrow@wildlife.ca.gov

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

August 1, 2017

California Fish and Game Commission
1416 Ninth Street, room 1320
Sacramento, CA 95814

RE: Notice of intent to amend the recreational abalone regulations in 2018

Dear Commissioners:

I am writing to request that a size limit increase be considered as an alternative for the 2018 abalone regulations changes which are being considered under agenda item #19 of the Fish and Game Commission meeting to be held August 16th. The notice of intent to amend the abalone regulations is being considered under the Abalone Recovery and Management Plan (ARMP) and is the result of current environmental conditions unrelated to fishing.

At the last Marine Resource Committee (MRC) meeting there were several proposals from the DFW for reductions in Total Allowable Catch (TAC) ranging from reductions in daily/annual limits to total fishery closure.

I am requesting that a size limit increase also be considered as an alternative for the following reasons:

1. Increasing the size limit would reduce actual landings (TAC) because of the decrease in the number of available abalones to be caught.
2. Increasing the size limit would allow more abalones to remain in the fishery longer, with a longer time for reproduction. Reduced reproduction, due to absence of kelp/food and competition from "exploding" urchin populations, is the main concern of the DFW managers.

From a fishermen's perspective, a size increase is far more acceptable than site or fishery closures. I realize that there are draw-backs to a size limit increase, as there are with all TAC reduction alternatives. But, a size limit increase is a simple, better way to provide the required protection of the resource because it improves reproduction and makes closures or other drastic changes unnecessary.

The Department is currently working on a new Fisheries Management Plan (FMP) due to be enacted into law in 2019. This is a perfect opportunity to assess the results of a size limit increase without making the law permanent if, for some unknown reason, it doesn't have the intended outcome.

Sincerely,



Jack Likins
Abalone fisherman

President Eric Sklar and members
California Fish and Game Commission

RE: August 16, 2017 Agenda No. 18 & 19, Abalone

Dear President Sklar:

Attached is a letter I wrote following watching your June 22, 2017 meeting. I have been involved with abalone in California my whole life and am as concerned about the future of this resource as you are.

In my letter, I report on my observations over the past 20 years. I am not trying to be overly critical, but am attempting to provide background information to the Commission. I feel there are options available which to date have not been utilized by the California Department of Wildlife (DFW). It appears to me that these options are identified in Amendments H.1 to the Abalone Recovery and Management Plan (ARMP). Utilizing these amendments/options by the California Fish and Game Commission (CFGF) could help reduce pressure on the northern California red abalone resource. It appears to me CFGF could do this right now. In addition, exercising these options could provide Californians with renewed access to the red abalone resource.

In 2005, an amendment was added to the ARMP which identifies an abundance of red abalone at San Miguel Island (SMI). At that time, there were an estimated 3,000,000 red abalone emergent at SMI. Of these, 10-20% were of commercial (7 3/4") size. This number should be significantly higher now.

A quote from the ARMP, Amendment H.1:

"Harvesting 10-20% of these abalone falling within the slot (197mm-203mm) size (1-2% of 3.m) should have no negligible effect on the population as a whole." ARMP, H.1, page H-9)

Thank you for your consideration. A signed copy has been mailed.

Steven L. Rebuck

President Eric Sklar and members
California Fish and Game Commission
1416 9th St.
Sacramento, Ca 95814

July 8, 2017

Steven L. Rebuck

Dear President Sklar and Commissioners:

It has now been 20 years since the recreational and commercial red abalone fisheries south of San Francisco were closed to human use. We can now assess the success and/or failure of Department of Fish and Wildlife (DFW) policies in regards to red abalone fishing.

At the time of the closure in May 1997, I was a consultant to the California Abalone Association (CAA) representing the commercial abalone fishermen. I also served as the Abalone Technical Consultant to the Southern Sea Otter Recovery Team (TC-SSORT), 1993-2004.

In 1997, I utilized much of the available published literature created by the California Department of Fish and Game (CDFG) to defend my clients. Commercial harvest of abalone began in 1850. Abalone was California's first commercial fishery. I was dismayed in 1997 and later that the CDFG/DFW has ignored this rich historic literature. In my experience, this denial of our history has been a hallmark of CDFG/DFW abalone policy over the past 20 years.

Fact is, it was California counties which first created abalone laws, followed by the California Legislature, enforced

through the Fish and Game Code. Although it was the duty of citizens to obey these laws, by 1997, it was the citizens who were blamed for failed resource management by CDFG managers. It can be assumed that the basic CDFG/DFW task is to prevent the overutilization of living natural resources. The state, not the citizens, created the abalone fishing laws.

Between 1916 and the early 1960s, Morro Bay, California was the site of annual landings averaging 2,000,000 pounds per year (Cox, 1962). This "sustainable" fishery was terminated by sea otters, not human use (Fisher, 1939; Ebert, 1968 a&b; Wild and Ames, 1974; Odemar and Wilson, 1974; Miller, 1975,1980; Hardy, 1982; Silva, 1982; Wendell, 1986b, 1995;Gotshall, 1984; et al).

For 1987, CDFG reported 41% of red abalone landing originated from San Nicolas Island, Ventura County, (CDFG, Abalone Ocean Sport Fishing, August 1991) which in 1987, became the site for an experimental relocation of sea otters by the US Fish and Wildlife Service (FWS). Within 5 years following relocation of sea otters to SNI, these red abalone landings reached zero. This fact was not considered by CDFG in 1997. Commercial red abalone landings were 391,030 in 1987 and 229,252 in 1996 (Annual Status of the Fisheries Report, 2003) reflecting the impact of sea otter relocation.

Using published research from CDFG, one can demonstrate that sea otters, between Monterey and San Luis Obispo County dominated approximately 90% of the former commercial abalone grounds by the mid-1970s. Fishermen were forced to relocate to the Channel Islands in order to continue fishing. Basically, the commercial fishery by the 1990s was fishing approximately 10% of their historic red abalone grounds and were landing approximately 10% of their former catch. One then has to ask: What was the commercial use problem?

Despite the rich literature on sea otters and the abalone fisheries, CDFG in 1997 unfairly focused all blame for resource declines on the commercial divers.

The primary political problem in 1997 was not commercial landings, it was export to China. Sport divers and some at CDFG resented this export. The most obvious solution was to ban export, making the fishery domestic only. Although suggested by CAA, this option/solution was not considered.

The fact was that of the 101 commercial abalone permit holders in 1997, 91 of them also held commercial sea urchin permits. At the time, sea urchin diving was far more lucrative than abalone diving. But, to maintain ones abalone permit, divers were forced to make fixed annual landings. The commercial abalone divers had attempted for years to have this landing requirement waved. In fact, in 1997, legislation was introduced to wave this requirement (Assemblyman Bordonaro), but emergency closure pre-empted this legislation.

A couple of what can only be characterized as dirty tricks were used in 1997 and the years leading up. One of these dirty tricks was the release of "draft" data by CDFG Marine Biologist, Konstantine Karpov. For the years before 1997, Karpov was leaking draft data and other information to the San Francisco Chronicle and other newspapers. These leaks inflamed the recreational dive community against the commercial divers.

A second leak was from CDFG Marine Biologist, Peter Haaker who claimed that sex ratios in red abalone were skewed. These claims were made to the FGC and had an alarming effect. However, after the closure, Haaker admitted his claims were false, but the damage was done. In all my decades of experience with CDFG, I had never seen CDFG biologist act so reckless with draft data.

In the first draft of the Abalone Recovery and Management Plan (ARMP) it states: "...two year closure..." The document also makes the statement that this was a "Fisheries Management Plan" (FMP) (Draft, Informational Document, California Abalone fishing, November 1997; And, Final Draft, 10-9-97 8:08 AM, Appendix 1, Draft Fisheries Recovery/Management Plan for California Abalones.)

Of course, the excuse for not completing this 20 year old FMP was the passage of the Marine Life Protection Act of 1998 (MLMA). So, here we are, now 19 years later and no FMP for the abalone fisheries.

In 2014, DFW announced plans to begin the FMP for abalone fishing. The timeline was to produce a draft FMP by spring, 2015 and a final version by spring 2017. To date, the draft does not yet exist. Is August 2017 a real date?

In 2005, CAA drafted a plan (Alternative 8) which was later incorporated into the ARMP of 2005. One component of this plan was to create a \$10. per abalone "fixed tag". The CAA proposal suggested an experimental harvest of 17,000. red abalone. Had CDFG/DFW accepted this experiment, \$170,000. would have been provided the first year before one abalone was harvested. This money could have been used for monitoring the fishery and for law enforcement. Each tag was to have the permit holders information. In addition, harvest size was to be increased to 8". Over the past 12 years, the tags alone would have generated over \$3.4 million dollars. With the combined landing taxes and permit fees, this amount would have been many millions of dollars more. It is curious why DFW said no.

During the 1980s, the commercial abalone divers self imposed a tax on abalone landings to support their research into abalone re-seeding. There was about \$250,000. in 1997. After 1997, CDFG siphoned off most of the tax money to fund black hole projects like a "risk assessment" which

they funded, then rejected. Only about 1% of this money remains.

In addition, other proposals for a southern abalone fishery have been put forth by the Abalone Advisory Group (AAG) in 2009 and by CAA/Dr. Jeremy Prince and Sarah Valencia, 2009 . Both proposals rejected by DFW.

In 2014, the California Fish and Game Commission (FGC) requested an assessment of their methodologies from the California Ocean Science Trust (OST). OST suggested in their final report that DFW methods were flawed. One area was reliance on "density" as their primary management method. (Density was also critiqued by Dr. Prince). A second area of concern was DFWs reliance on "index sites" for collection of density data. DFW was not able to monitor all of their index sites on an annual basis. DFW decided to round-file OSTs report and has continued to rely on failed methodology.

At the FGC June 22, 2017 meeting, former FGC Executive Director, Zonke Mastrup made the statement that "..abalone fishing has never been better ." This is the result of relying on density in the ARMP. Clearly, there is a serious problem with the recreational only abalone fishery under the ARMP. The lack of recruitment will likely spell doom for the fishery in a few short years.

Having only a fishery in northern California means that approx. 5250 southern, south-central California and out-of-state divers converge on the north coast annually, further depleting the remaining abalone (Kashiwada, 2016).

During the 1997 abalone debate, the majority of "blame" for declining stocks was focused on the commercial men. The commercial fishery was harvesting approximately 229,252 (low 1996)-448,593 (high 1992) pounds per year, last decade of the fishery. The recreational fishery on the north

coast has been estimated at 1,500,000-3,000,000 pounds per year. "Incomplete data for year 2000 indicated approx.. 728,000 red abalone were taken on the north coast" (Annual Status of the Fisheries Report, 2003) (At 3 pound each, this would be over 2.m pounds of north coast abalone). In the same report, recreational poaching was estimated at 217,000 pounds. Yet, the rhetoric was: "The commercial divers take too many" which was not supported by landing data.

DFW has told us that the current FMP will be for the northern California recreational fishery only. At the pace they are moving, it could be several more years before an FMP is prepared for the area south of San Francisco.

At the June 22, 2017 FGC meeting, there was discussion about "citizen scientists." I would submit that by ignoring the commercial divers over the past 20 years, DFW has cut off some of the most knowledgeable "citizen scientists" that exist. An examination of the CDFG literature demonstrate this fact. Bonnot (1948) reported it was commercial abalone divers at Morro Bay who first taught CDFG biologists how to dive and that they were "keen observers." Parker (1986) reported that in cooperative dives between CDFG biologist and commercial divers on the north coast, it was the commercial divers who were far better at finding abalone in non-destructive surveys.

One of the requirements of SB 463 (Thompson, 1997) was the creation of a Recreational Abalone Advisory Committee (RAAC). For the majority of the RAAC history, the appointed members were primarily those recreational divers who wanted the commercial abalone fishery to remain closed, basically creating a kangaroo court.

To recap, DFW continues down a political, unscientific road:

* Ignoring CDFG published historic literature.

* Ignoring alternative plans: Alternative 8, 2005/07 (ARMP Amendment H); Abalone Advisory Group 2009; CAA, Red Abalone Market Fishery, 2009; California Ocean Science Trust, 2014.

* Ignoring alternative funding sources like the \$10. commercial tag and/or commercial resource rents.

*Red abalone are not threatened or endangered with extinction statewide.

*DFW ignores significant recovery of pink and green abalone in southern California and red abalone at San Miguel Island. It is easily said these abalone in southern California are “dying of old age” while DFW does nothing but punish the California citizens.

In my opinion, for the past 20 years, CDFG/DFW has mislead the FGC about the status of abalone in California. And, DFW has demonstrated gross incompetence in it’s management strategies.

However, as cited above, CAA did submit an “alternative” in 2005, which was included in the ARMP, (Appendix H, H.1, An Amendment to the Abalone Recovery and Management Plan’s alternative 1). This alternative could provide relief by reducing the amount of red abalone currently being harvested from northern California, providing south-central and southern Californians an alternative fishing ground. It would appear within the power of the CFGC to open immediately San Miguel Island (SMI) to red abalone fishing.

In 2005, in the ARMP, H.1, it was estimated there were 3,000,000 emergent red abalone at SMI (H-4). Of these, 10% to 20% were estimated to be of commercial size—7 ¾” (H-9). This was 300,000 to 600,000 abalone in 2005. (ARMP, Appendix H, pages H.1-H.11) What are the

emergent population/ legal size percentage now? Our \$10. tag proposal was changed to a 10% "resource rent." At 15,000 red abalone, this would generate \$72,000. (ARMP, H-10) 3,000 sport tags/cards would generate an estimated \$18,000 (ARMP, H-10).

Opening SMI now could immediately reduce considerable pressure off the northern resource, providing an alternative for those who must now travel hundreds of miles to fish.

"Harvesting 10-20% of these abalone falling within the slot (197mm-203mm) size should have no negligible effect on the population as a whole." ARMP, H.1, H-9).

The ARMP is the law of the land. It appears the CFGC has the discretion now to open this fishery. Please consider using the ARMP, Amendment H now to help reduce the harvest of red abalone in northern California.

Respectfully submitted,