

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

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

I. Date of Initial Statement of Reasons: September 12, 2017

II. Date of Final Statement of Reasons: January 25, 2018

III. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: August 16, 2017
Location: Sacramento, CA

(b) Discussion Hearing Date: October 12, 2017
Location: Atascadero, CA

(c) Adoption Hearing: Date: December 7, 2017
Location: San Diego, CA

IV. Update:

At its December 7, 2017 meeting, the Fish and Game Commission (Commission) adopted Option 1 of the proposed regulations, to close the recreational abalone fishery consistent with the Abalone Recovery Management Plan (ARMP) and California Department of Fish and Wildlife (Department) findings, and adopted a sunset provision of that closure. The fishery would re-open on April 1, 2019, or upon adoption of an abalone fishery management plan, whichever comes first. The Commission published a 15-day continuation notice on December 27, 2017, to add the sunset provision in subsections 29.15(i)-(j).

V. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

All written and verbal comments received by the Commission on the proposed regulatory changes are summarized and responded to in this Final Statement of Reasons for Regulatory Action in Tables 1 and 2. The public comment period on the originally proposed regulatory language closed with adoption of Option 1 of the proposed regulatory action at the December 7, 2017 Commission meeting. Written comments on the revised proposed regulatory language were accepted from December 28, 2017 to January 12, 2018; no public comments were received during the 15-day re-notice.

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VII. Location of Department Files:

Department of Fish and Wildlife
1416 Ninth Street
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

Site closures were considered but rejected because it would concentrate fishermen to a smaller number of locations, be complicated and confusing to enforce, and would most likely put excessive pressure on the open sites.

(b) No Change Alternative:

Without the proposed regulatory change, red abalone fishery regulations will revert back 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) Consideration of Alternatives:

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 adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

IX. 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 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, 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 anticipates limited 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; 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 long-term health of the resource to maximize future sustainable fishing opportunities. However, a complete closure of the red abalone fishery could result in up to 250 direct job losses.

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

Except for Option 2, Sub-Option C: Increase Minimum Size Limit, wherein fishermen may have to spend from \$5 -\$15 to purchase a new abalone measuring gauge, 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 costs or savings; however, the Department has the potential to lose revenue from abalone report card sales, from \$103,750 to \$520,825. 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:

No costs or savings, however local governments have the potential to receive less sales tax and transient occupancy tax revenue.

- (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.

Updated Informative Digest (Plain English Overview)

The recreational red abalone (*Haliotis rufescens*) fishery is one of California's most successful and popular fisheries, and is economically important, particularly to Sonoma and Mendocino counties where approximately 95 percent of the multi-million dollar fishery takes place. Over 25,000 fishermen participate in the fishery each year. Red abalone may be taken with a sport fishing license subject to regulations prescribed by the Fish and Game Commission (Commission).

Under existing statute (Fish and Game Code Section 5521) and regulation (Section 29.15, Title 14, CCR), red abalone may only be taken for recreational purposes north of a line drawn due west magnetic from the center of the mouth of San Francisco Bay, except in the closed Fort Ross area. The current regulation also specifies the season, hours, a combined daily and possession limit, daily limit, special gear provisions, measuring devices, abalone report card requirements, and minimum size. Red abalone may only be collected by skin diving (without SCUBA) or rock picking during low tides. The recreational red abalone season is scheduled to open April 1, 2018.

The California Department of Fish and Wildlife (Department) has identified major changes in the density, occurrence, size and health of red abalone and the kelp upon which it depends for food. Specifically, the Department has found no meaningful changes in three red abalone resource conditions: fishing grounds, health and reproduction.

Critical negative impacts to red abalone fishing grounds:

- (1) A dramatic decline in sea stars, important sea urchin predators, due to sea star disease.
- (2) A dramatic increase (60 times) in the density of purple sea urchins in 2015, increasing competition with red abalone for food.
- (3) A lack of kelp, a vital food for red abalone and which has resulted in increasing the efficiency of fishing efforts in shallow habitats.
- (4) A decline in deep-water red abalone densities.
- (5) Continued decline in overall average red abalone densities in spite of significant take reductions implemented in 2014. 2017 Department surveys in Sonoma and Mendocino counties show a dramatic decline in densities at seven of the 10 index sites, to an average of 0.16 per m². This average is below the ARMP fishery closure trigger of 0.3 per m²

Critical negative impacts to red abalone health:

- (1) Visual red abalone body health scores for red abalone taken in the fishery during the spring of 2016 show that more than 25 percent of red abalone were shrunken in body mass at sites in northern California.

- (2) Body condition index declined at Van Damme State Park by 20 percent, but no significant difference was observed at Fort Ross in summer of 2016 (60 red abalone per site).
- (3) Department staff and abalone fishermen have observed weak red abalone washed up on shore and easy to remove from the rocks as well as many new shells of all size classes, indicating increased natural mortality.

Critical negative impacts to red abalone reproduction:

- (1) Gonad index declined significantly at Van Damme State Park and at Fort Ross in the summer of 2016 (60 red abalone per site).
- (2) Small numbers of larval red abalone observed in plankton surveys in Sonoma and Mendocino counties in 2015.
- (3) Small numbers of newly settled red abalone observed in coralline-covered rock samples from Sonoma and Mendocino counties in 2015.
- (4) No juvenile (< 21 millimeter) red abalone observed in artificial reefs in Van Damme State Park in 2016 and 2017.

Proposed Regulatory Action

At the August 16, 2017 Commission meeting, the Department presented its recommendation that the fishery be closed due to hitting the trigger as set forth in the ARMP (Option 1). The Commission added additional regulatory options to protect the tradition of abalone fishing. These additional options are presented as Option 2 with sub-options that can be selected individually or in any combination. Some of the sub-options have ranges that must be selected from at the adoption hearing. Option 2 is not consistent with the ARMP.

Option 1 is consistent with the ARMP and protects the fishery during poor environmental conditions without the addition of fishing mortality. The Department recommends this regulatory proposal as a necessary step to facilitate the red abalone population's recovery from the multi-year poor environmental conditions and massive losses of red abalone fishery stock.

Option 2 is a set of regulatory options to maintain some fishing opportunity to maintain the tradition of abalone fishing. This option is divided into sub-options that allow limited take as follows:

Sub-Option A: Open Fort Ross to abalone fishing

Sub-Option B: Reduce the daily bag/possession limits within the range of [1 to 3] and the annual limit within the range of [2 to 9]

Sub-Option C: Increase the size limit to 8 inches

Sub-Option D: Limit the number of report cards sold annually within the range of [5,000 to 25,000]

The Commission may adopt one or more sub-options from Option 2 and must specify a specific number for sub-options B and D.

At its December 7, 2017 meeting, the Commission adopted Option 1 of the proposed regulations, to close the recreational abalone fishery consistent with the ARMP and Department findings, and adopted a sunset provision of that closure. The fishery would re-open on April 1, 2019, or upon adoption of an abalone fishery management plan, whichever comes first. The Commission published a 15-day continuation notice on December 27, 2017, to add the sunset provision in subsections 29.15(i)-(j).

Updates to Authority and Reference Citations Based on Recent Legislation

Senate Bill 1473 (Stats. 2016, Ch. 546) made organizational changes to the Fish and Game Code that became effective January 1, 2017. The changes included moving the Commission's exemptions from specified Administrative Procedure Act time frames from Section 202 to Section 265 of the Fish and Game Code, moving the Commission's notice requirements from Section 210 to Section 260 of the Fish and Game Code, and moving the Commission's authority to adopt emergency regulations from Section 240 to Section 399 of the Fish and Game Code. These were organizational changes only. In accordance with these changes to the Fish and Game Code, sections 202, 210 and 240 are removed from, and sections 260, 265 and 399 are added to, the authority and reference citations for Section 29.15. Senate Bill 1473 also repealed subdivision (b) of Section 220 of the Fish and Game Code; therefore, Section 220 is removed from the list of authority and reference citations in Section 29.15.

Benefits of the Regulation

The **closure of** the red abalone fishery will benefit the valuable red abalone resource by protecting it from excessive 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 State 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.

Addendum to Updated Informative Digest and
Final Statement of Reasons for Regulatory Action

Nothing has changed since the previous Updated Informative Digest and Final Statement of Reasons. Therefore, all the information contained in the Final Statement of Reasons is accurate. The regulations do not impose a mandate upon local agencies or school districts.