

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.