

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Section 200, 205, 260, 265 and 399 of the Fish and Game Code (FGC) and to implement, interpret or make specific Section 200, 205, 260, 265 and 399 of said Code, proposes to add Section 29.06, Title 14, California Code of Regulations (CCR), relating to increase of recreational take of purple sea urchin.

Informative Digest/Policy Statement Overview

The addition of Section 29.06 increases the recreational take of purple sea urchin to 40 gallons. This is one of several actions taken by the California Department of Fish and Wildlife (Department) that is necessary to protect the historic and valuable ocean habitat on the northern California coast. The recent increase in population of the purple sea urchin has led to significant losses of ocean habitat. Unchecked, the purple sea urchin has decimated kelp beds leading to the decline of abalone and other important marine life dependent on this unique ecosystem.

As an emergency rule, Section 29.11 increased recreational take of purple sea urchin to 20 gallons. This provision is due to sunset on February 7, 2019. To maintain recreational interest in purple sea urchins, to the end that will benefit kelp and abalone recovery, a standard rulemaking is necessary to allow a higher take limit.

Furthermore, bull kelp, the dominant kelp in northern California, is an annual species. Any restoration attempt would yield observable results only after it has been conducted for a year or more. As such, both the goal of supporting a growing recreational interest and the goal of restoring habitat require the new regulation 29.06 for at least the next two or more years.

The addition of Section 29.06 extends the higher take limit to Humboldt, Mendocino, Sonoma, and possibly Del Norte counties.

Benefits of the Regulations

The regulation would maintain a developing recreational interest in purple sea urchin as well as help reduce grazing pressure in a vulnerable ecosystem.

Consistency and Compatibility with Existing Regulations

The proposed regulations are consistent with Section 29.05, Title 14, CCR. Commission staff has searched the CCR and found no other regulations that address the recreational take of purple sea urchin and therefore finds that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to adopt regulations necessary to regulate the recreational take of fish, including purple sea urchins (FGC Section 205). No other state agency has the authority to regulate the recreational take of purple sea urchin.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the QLN Conference Center, 1938 Avenida del Oro, Oceanside, California, on Wednesday, December 12 at 8:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Sacramento, California, on February 7, 2019 at 9:00 a.m., or as soon thereafter as the matter may be heard. The specific location for this meeting is still being determined. As soon as this information is available, but not less than thirty days before the hearing, a continuation notice will be sent to interested and affected parties providing the exact location. The continuation notice will also be published in the California Regulatory Notice Register and published on the Commission's website.

It is requested, but not required, that written comments be submitted on or before January 23, 2019 at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on January 31, 2019. All comments must be received no later than February 7, 2019, at the hearing in Sacramento, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through the Commission website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Melissa Miller-Henson, Acting Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Melissa Miller-Henson or David Thesell at the preceding address or phone number. Anthony Shiao, Environmental Scientist, Department of Fish and Wildlife, phone (805) 560-6056 has been designated to respond to questions on the substance of the proposed regulations. Mailed comments should be addressed to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244-2090.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 265 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4, 11346.8 and 11347.1 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Assessment

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 Business, 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. Option 1: New Take Limit for Humboldt, Mendocino, and Sonoma Counties, and Option 2: New Take Limit for Del Norte, Humboldt, Mendocino, and Sonoma Counties would both create permanent incentives for more tourists to travel to coastal northern California and help stimulate local economy.

- (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 impact on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California because the proposed regulation is not likely to substantially increase or decrease recreational fishing opportunities within California. The proposed regulation, (both Option 1 and Option 2) is expected to increase interests in recreational diving in northern California that previously did not exist, which may provide a small increase in economic stimulus to local economies.

The Commission anticipates benefits to the health and welfare of California residents (from both Option 1 and Option 2) through the vigorous activity required to pursue purple sea urchin. The Commission does not anticipate any benefits to worker safety because the proposed regulation will not affect existing working conditions. The Commission anticipates some benefit (from both Option 1 and Option 2) to the state's environment through the restoration of kelp forest habitats to foster and support a diverse balance of species.

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

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action (for both Option 1 and Option 2).

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (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.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code Sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated: November 13, 2018

Melissa Miller-Henson
Acting Executive Director