

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: Recreational Take of Red Abalone

I. Date of Initial Statement of Reasons: October 26, 2018

II. Date of Final Statement of Reasons: January 2, 2019

III. Dates and Locations of Scheduled Hearings:

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|-----|--------------------|-----------|-------------------|
| (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 |

IV. Update:

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

At its December 12, 2018 meeting, the California Fish and Game Commission (Commission) adopted the regulations as proposed by the California Department of Fish and Wildlife (Department), amending subsection 29.15(j) to extend the closure of the recreational abalone fishery for two years, until April 1, 2021. The proposed regulatory change also amends subsections 29.15 (a), (b) and (c), which specifies effective dates for take and possession of red abalone. The regulatory change is necessary to facilitate recovery of the red abalone population while the preparation of the Red Abalone Fishery Management Plan is currently underway.

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 during the public

comment period on the proposed regulatory changes are summarized and responded to in Attachment 1 to this Final Statement of Reasons for Regulatory Action.

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, Suite 1320
Sacramento, California 95814

VII. Location of Department Files:

Department of Fish and Wildlife
1416 Ninth Street, Suite 1342A
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

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 **Abalone Recovery and Management Plan** (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, 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 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 Department 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.

Updated 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 Department's data from dive surveys conducted in early fall of 2018 show no positive changes to the situation, and in fact suggests further declines in abalone stocks. The 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.

UPDATE

At its December 12, 2018 meeting, the Commission adopted the proposed regulations as noticed, amending subsection 29.15(j) to extend the closure of the recreational abalone fishery until April 1, 2021, and amending subsections 29.15 (a), (b) and (c), which specify effective dates for take and possession of red abalone.

There have been no changes in applicable laws, or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.