

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 Abalone Closure

I. Date of Initial Statement of Reasons: July 20, 2020

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: August 19, 2020

Location: Webinar/ Teleconference

(b) Discussion Hearing

Date: October 14, 2020

Location: Webinar/ Teleconference

(c) Adoption Hearing

Date: December 9, 2020

Location: Webinar/ Teleconference

III. Description of Regulatory Action

(a) Statement of Specific Purpose of Regulatory Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary

Red abalone (*Haliotis rufescens*) is a resource 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 and adopted the ARMP in 2005.

Red abalone are herbivores that live on rocky reefs in kelp forests, eating red and brown algae. Starting in 2014, a combination of unprecedented environmental and biological stressors, including warmer-than-normal waters and decreasing food resources leading to starvation conditions, began to negatively impact abalone populations. Since then, the Department has actively conducted surveys, visual assessments, and histological sampling of north coast abalone, and received citizen reports of unhealthy or moribund abalone within the fishery. In the September 2017 Initial Statement of Reasons for Regulatory Action (Commission, 2017) the Department identified wide-sweeping changes in the density, occurrence, size and health of red abalone and the kelp upon which it depends for food.

Due to the sharp decline of abalone, the expanding urchin barren, and the dwindling kelp stands throughout the state, the Commission adopted emergency regulations in 2016 to reduce the season by two months and the per-person annual take limit from 18 to 12 (Office of Administrative Law (OAL) rulemaking file 2016-1216-01E). Scientific research conducted by

Department staff continued to document the extent of the degradation experienced by the stock and the environment. In 2017, the Commission closed the fishery until 2021 through a regular rulemaking (OAL rulemaking file 2018-0329-01SR).

Since the closure of the recreational fishery, the Department has found no meaningful changes in conditions of the abalone resource or environment as described in the September 2017 Initial Statement of Reasons for Regulatory Action (Commission, 2017). Surveys at selected coastal sites in late summer and early fall of 2019 show no evidence of improved conditions, with bull kelp coverage still significantly lower than historical average (Figure 1). Recent analysis suggests that the red abalone stock is not expected to be able to sustain even a *de minimis* fishery for another 9-11 years. A fishery management plan (FMP) for red abalone is currently under development by the Department and stakeholders to guide future management actions for the northern California recreational fishery, separate from the ARMP. The FMP is expected to be completed and adopted before 2026, at which point Section 29.15 will likely be amended to accommodate the implementing regulations of the FMP.

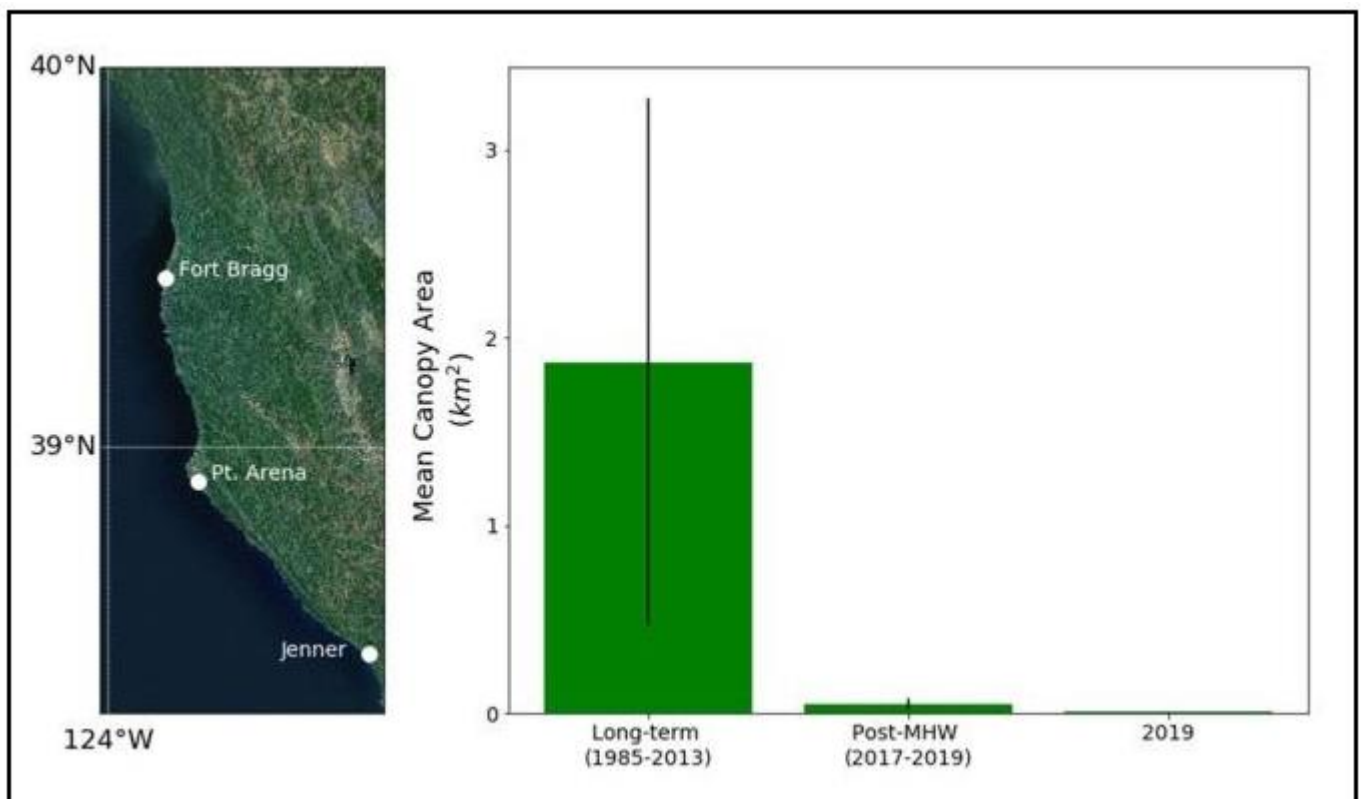


Figure 1. Mean Bull Kelp Coverage in Northern California in km<sup>2</sup> before Marine Heat Wave (MHW), after MHW, and in 2019 (Source: McPherson et al., 2020).

### 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. The closure

is in effect until April 1, 2021 under subsection 29.15 (j). If the regulations are not amended to delete or extend that date, the fishery will re-open on April 1, 2021, which will allow for the recreational take of abalone in open fishing areas during the open season (current subsections 29.15(a), (b), and (c)).

### **Proposed Amendment - Subsections 29.15 (a)-(c), (i) and (j)**

#### **Extend the Sunset Date**

The Commission is proposing to extend the sunset date of the closure in Section 29.15 by replacing the effective year of 2021 with the year 2026 in current subsections 29.15 (a), (b), (c) and (j). Delaying the reopening date is necessary because without the delay, the fishery will re-open while the stock is still in a vulnerable state, which would be detrimental to the recovery of the red abalone population. The April 1, 2018 effective date listed in current subsection (i) will also be removed since the closure is already in place.

The red abalone population is not expected to recover by 2026; however, Department staff has been engaging with stakeholders since 2014 to draft a comprehensive FMP. The FMP is expected to be completed before 2026 and will include implementing regulations which will amend Section 29.15. Language pertaining to the current closure is expected to be included as part of the implementing regulations of the FMP.

#### **Rearrange Order of Subsections**

The proposal would also rearrange the order of current subsections (a), (b), (c), (i) and (j) and would split current subsection (i) into two subsections. The relocated language from subsection (a) to subsection (j), from subsection (b) to subsection (k), and from subsection (j) to subsection (b) is unchanged except the date change described above and updates to the cross references to reflect the rearrangement of the subsections. The relocated language from subsection (i) to subsections (a) and (c) is unchanged except for the removal of the words “Effective April 1, 2018” and the amendments to clarify the exceptions for abalone taken prior to April 1, 2018. This re-ordering of the subsections places the requirements effective 2026 in sequence, and the requirements for abalone taken prior to the closure April 1, 2018 in sequence in the regulation text. This rearrangement in language is necessary to improve clarity, emphasize the fishery closure, and aid with enforcement.

#### **Repeal Requirement to Retain All Detached Legal Size Abalone**

Subsection 29.15(d) specifies the minimum size limit for red abalone and states that all legal size abalone detached must be retained. The proposed regulation will repeal the requirement to retain detached legal size abalone. This change is necessary for consistency with subsection (a) which prohibits take and possession of abalone.

#### **(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

Jackson, A., Berube, P., Taniguchi, I., Likins, J., Silva, J., Pope, E., and S. Mastrup. 2020. *Summary of the Management Strategy Integration Process for the North Coast Recreational Red Abalone Fishery Management Plan*. Administrative Team Report to the California Fish and Game Commission. 115 pp. Available from:

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=178566&inline>

McPherson, Finger, Housekeeper, Bell, Carr, Rogers-Bennett, & Kudela. 2020. Paper Under Review (Analyzes kelp coverage data gathered from Northern California from 1985-2019).

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. Available from: [https://fgc.ca.gov/Regulations/2017-New-and-Proposed#29\\_15S](https://fgc.ca.gov/Regulations/2017-New-and-Proposed#29_15S)

*Abalone Recovery and Management Plan*

<https://www.wildlife.ca.gov/Conservation/Marine/ARMP>

(f) Public Discussions of Proposed Regulations Prior to Notice Publication

The poor conditions of the red abalone populations have been well-known and have been discussed extensively in previous rulemakings. The subject was discussed during the August 2017, October 2017, December 2017, August 2018, October 2018, and December 2018 Commission meetings. The present action to extend the sunset date from 2021 to 2026 has been discussed at the June 24, 2020 Commission meeting, as well as during a pre-notice outreach webinar with the Red Abalone Advisory Committee on July 11, 2020.

#### IV. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

Elimination of the sunset date was rejected due to stakeholders' opposition to an indefinite fishery closure. No other alternatives have been 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 red abalone populations will be open to recreational take in 2021 to the detriment of the fishery's recovery.

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. The regulatory action will not impact compliance costs or fishery activity due to the existing closure and 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 within the state, the creation of new businesses, the elimination of existing businesses or worker safety. The Commission anticipates generalized benefits to the health and welfare of California residents and benefits to the state's environment. The proposed action continues an existing closure designed to ensure the long-term sustainability and quality of the fishery, promoting future 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

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

VII. Economic Impact Assessment

(a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State

The Commission does not anticipate any negative impacts on the creation or elimination of jobs within the state. The abalone fishery has been closed since April 1, 2018. No change in employment is anticipated in direct relation to the proposed extension through 2026. The proposed extension is designed to ensure the long-term sustainability and quality of the fishery, promoting future 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 any impacts on the creation of new businesses or the elimination of existing businesses within the state. The abalone fishery has been closed since April 1, 2018. No change is anticipated in relation to the creation of new businesses or the elimination of existing businesses within the state from the proposed action. Continuing the fishery closure is proposed to support the long-term sustainability of the abalone resource and, thus, the future viability of the fishery that may 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 any impacts on the expansion of businesses currently doing business within the state. The abalone fishery has been closed since April 1, 2018. Continuing the fishery closure is proposed to support the long-term sustainability of the abalone resource and, thus, the future viability of the fishery that may 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

(e) Benefits of the Regulation to Worker Safety

None. The proposed regulation does not impact working conditions

(f) Benefits of the Regulation to the State's Environment

The Commission anticipates benefits to the state's environment. It is the policy of the 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 Section 7050(b)). The proposed regulation will benefit the state's environment by helping to ensure sustainable populations of red abalone for fishery and ecosystem management.

## **Informative Digest/Policy Statement Overview**

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. The closure is currently set to expire on April 1, 2021.

The Fish and Game Commission (Commission) is proposing to extend the sunset date of the closure to April 1, 2026. A five-year extension of the sunset is expected to allow sufficient time for completion of the Red Abalone Fishery Management Plan and associated implementing regulations. In addition, the proposal will reorganize the subsections of Section 29.15 and update cross references to reflect that reorganization. The proposed regulation will also repeal the requirement in subsection (d) that states all legal size abalone detached must be retained.

### **Benefits of the Regulations**

The proposed regulation will benefit the state's environment by helping to ensure sustainable populations of red abalone for fishery and ecosystem management.

### **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 regulations are consistent with other recreational fishing regulations and marine protected area regulations in Title 14, CCR, and therefore has determined that the proposed regulation is neither inconsistent nor incompatible with existing state regulations.