

## **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 sections 200 and 205 of the Fish and Game Code and to implement, interpret or make specific sections 200 and 205 of said Code, proposes to amend sections 29.06, Title 14, California Code of Regulations, relating to recreational sea urchin bag limit exemption.

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

The Fish and Game Commission (Commission) and the Department of Fish and Wildlife (Department) are proposing to amend Section 29.06 of Title 14, California Code of Regulations (CCR). The proposed regulations would establish two areas for kelp restoration and information collection efforts aided by recreational divers. The proposal is the state's most recent attempt to help restore depleted and diminishing kelp forests in Central and Northern California following warmer than normal ocean conditions and the loss of predatory sea stars to wasting disease. Many former kelp forests are now urchin barrens, and new kelp stands cannot be reestablished due to overgrazing by sea urchins.

Best available studies suggest that sea urchin density can be controlled only if sufficient mortality can be incurred. This proposal puts forth Caspar Cove in Mendocino County and Tanker Reef in Monterey County as two sites where recreational divers will be able to test the feasibility of controlling sea urchin populations through recreational diving efforts. It is hoped that kelp refuges can be created at these sites and when ocean conditions are again favorable for kelp growth and return of natural predators, these areas can provide the necessary spore banks to reseed the coast.

Under the proposed regulations, recreational divers are allowed to take unlimited purple sea urchins in Caspar Cove and unlimited purple sea urchins and red sea urchins at Tanker Reef. Take of red sea urchin will not be allowed in Caspar Cove because of an active commercial red sea urchin fishery in the area. Take must be conducted by hand or with hand-held tools due to the risks that automated or pressurized machines pose to the hard substrate of the reefs. The primary purpose of the proposed regulations is to collect data and gather information; the regulations will sunset on April 1, 2024. Upon the expiration of the proposed regulations, the Commission and the Department will work to implement the next step of its adaptive management based on information gathered.

### *Benefits of the Regulations*

The primary goal of this proposal is to test the effectiveness of kelp restoration through sea urchin control by recreational divers at two test sites. The results from the test sites will help inform future kelp restoration projects. The proposal can also potentially contribute to the overall statewide kelp restoration effort. For further discussion of the benefit analysis, please see impact of Regulatory Action/Results of the Economic Impact Assessment (sub b).

### *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 and 205); 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.

## Public Participation

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing to be held on Wednesday, October 14, 2020 at 8:30 a.m., or as soon thereafter as the matter may be heard. Instructions for participation in the webinar/teleconference hearing will be posted at [www.fgc.ca.gov](http://www.fgc.ca.gov) in advance of the meeting or may be obtained by calling 916-653-4899.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a webinar/teleconference hearing to be held on Wednesday, December 9, 2020 at 8:30 a.m., or as soon thereafter as the matter may be heard. Instructions for participation in the webinar/teleconference hearing will be posted at [www.fgc.ca.gov](http://www.fgc.ca.gov) in advance of the meeting or may be obtained by calling 916-653-4899.

It is requested, but not required, that written comments be submitted on or before November 30, 2020 at the address given below, or by email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). **Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on December 4, 2020.** All comments must be received no later than December 9, 2020, during the webinar/teleconference hearing. If you would like copies of any modifications to this proposal, please include your name and mailing address. Mailed comments should be addressed to Fish and Game Commission, PO Box 944209, Sacramento, CA 94244-2090.

## Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikethrough format can be accessed through the Commission website at [www.fgc.ca.gov](http://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, 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 Sherrie Fonbuena at [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov) or at the preceding address or phone number. **Environmental Scientist, Anthony Shiao, Department of Fish and Wildlife, (805) 560-6056 or [Anthony.Shiao@wildlife.ca.gov](mailto:Anthony.Shiao@wildlife.ca.gov), has been designated to respond to questions on the substance of the proposed regulations.**

## 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 because the proposed regulatory action will extend and expand an existing kelp habitat restoration effort that will help to support and a variety of recreational sportfishing opportunities. The restoration of kelp forests is vital to the revitalization of the declining abalone sport fishery and to an array of species that benefit from the kelp forest ecosystem. The proposed action will have no adverse impact to recreational opportunities or to species of value for commercial fisheries.

- (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 proposed action furthers the mission of the Commission, which is, in part, to ensure that California will have abundant, healthy, and diverse fish and wildlife that thrive within dynamic ecosystems for the benefit of all citizens of the State. 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; and expansion of business. The proposed action is designed to ensure the long-term sustainability and quality of the kelp forest ecosystem in Central and Northern California, as well as the coastal economy that relies on it. Small increases in recreational urchin diving opportunities may result in an increase in visits to the affected areas that will bring some additional local expenditures to businesses that support ocean diving activities. However, the increase in visits are not likely to be substantial enough to spur the creation of new jobs, new businesses, or the expansion of businesses. Thus, the regulatory action indirectly benefits the health and welfare of the California residents and the state's environment, and no effects on worker safety.

- (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 change in administration or enforcement costs are anticipated by CDFW or other State agencies. Consideration was given to keep administrative and enforcement costs within existing budgets. No impact in federal funding to the State is anticipated.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None. The proposed action has been designed to ensure that there are no nondiscretionary cost impacts to local law enforcement or emergency response services.

(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: September 29, 2020

Melissa Miller-Henson  
Executive Director