

CALIFORNIA FISH AND GAME COMMISSION
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION FOR
READOPTION OF EMERGENCY REGULATIONS

Readoption of Section 29.06
Title 14, California Code of Regulations
Re: Purple Sea Urchin

Date of Statement: July 20, 2020

I. Emergency Regulation in Effect to Date

The California Fish and Game Commission (Commission) approved an emergency rulemaking, Section 29.06, that became effective on March 17, 2020. The emergency addresses concerns over the impact of purple sea urchin (PSU) overpopulation along the Northern California coast. The rule allowed recreational divers to take an unlimited number of PSU within Caspar Cove, Mendocino County.

The rule was adopted to allow recreational divers to participate in an effort supported by the California Department of Fish and Wildlife (Department) and Ocean Protection Council (OPC) to test the effect of controlling overpopulated sea urchins through anthropogenic influence. Studies have suggested that for such projects to work, intense and sustained take, mirroring that of natural predators, might be necessary. The Department has since been working with recreational divers and other partners to evaluate PSU population control in Caspar Cove.

II. Request for Approval of Readoption of Emergency Regulations

The current emergency rule, Section 29.06, will expire on September 15, 2020 unless it is readopted for an additional 90 days.

Since its adoption in March, Department staff has been working closely with recreational and commercial divers to remove PSUs in Caspar Cove. However, the COVID-19 pandemic has made public participation in these efforts and studying the effects much more difficult. Department staff is currently in the process of developing a regular rulemaking that will abolish recreational daily bag limit for PSU in Caspar Cove. In order to develop the necessary information to inform that rulemaking, the ongoing study at Caspar Cove must continue, and the current emergency rule would have to be extended.

III. Statement of Facts Constituting the Need for Readoption of the Emergency Regulatory Action

Since 2014, bull kelp (*N. luetkeana*) in Northern California has declined by more than 90%. This decline has been linked to a combination of severe warm water events and multiple ecological stressors, particularly an explosive increase in

PSU populations exacerbated by the loss of predatory sea stars due to sea star wasting disease. PSU are a native species in California; however, the species' abundance is now at a 60-fold increase compared to historic levels. This has led to the suppression of bull kelp forests on the North Coast, and a regime shift from bull kelp forests to urchin barrens across most of the region. The collapse of the kelp has had cascading effects resulting in significant losses of kelp forest ecosystem services, as well as the collapse of the North Coast commercial red urchin fishery in 2015 and the closure of the recreational red abalone fishery in 2018.

The environmental conditions in Northern California have continued to deteriorate. By 2019, divers from the California Department of Fish and Wildlife (Department) have observed very few remaining patches of bull kelp in Northern California, a condition corroborated by local divers, research entities such as Reef Check California, and the latest kelp coverage data (Figure 1). These stands tend to occupy the top of isolated, frequently disturbed boulders and rock formations that are more difficult for PSU to reach. However, Department staff are extremely concerned that the expanding PSU population may soon reach these remaining stands. As annual plants, bull kelp requires a large standing spore stock to persist successfully, and the preservation of the remaining stands is critically important.

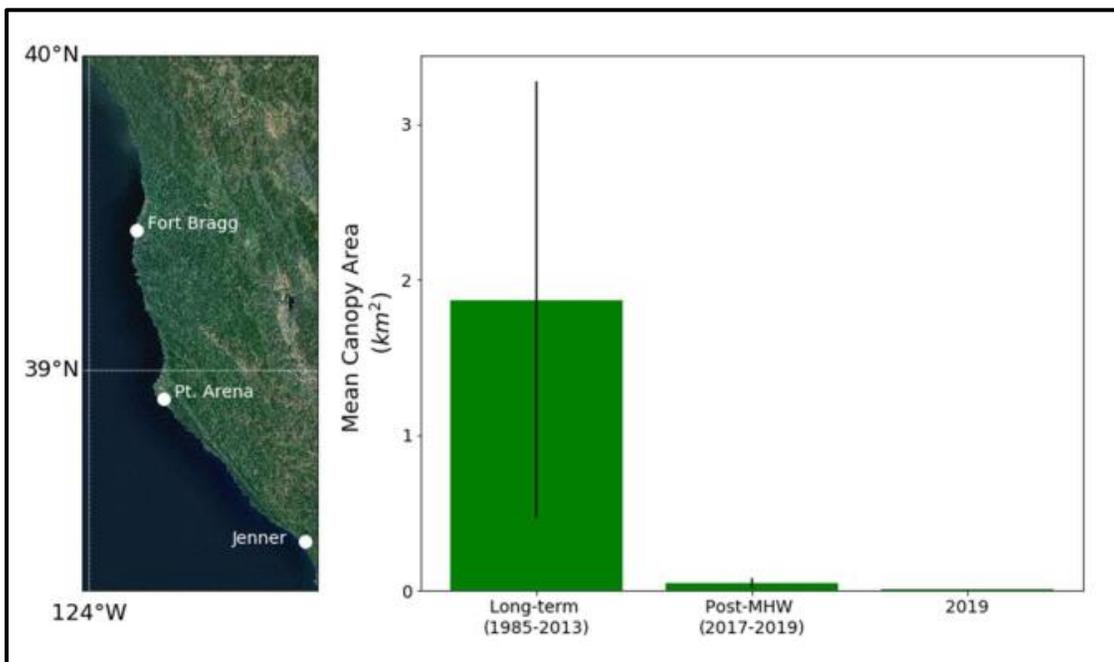


Figure 1. Mean Bull Kelp Coverage in Northern California in km² before Marine Heat Wave (MHW), after MHW, and in 2019 (Source: McPherson, Finger, Housekeeper, Bell, Carr, Rogers-Bennett, & Kudela 2020).

Prior Commission Actions

In December 2017, the Commission closed the red abalone fishery for the 2018 season. Since then, the poor condition of the kelp forests has persisted. In August 2018, Commission and stakeholders agreed to potentially extend the closure by another two years. Recovery of the abalone fishery will not be possible without the recovery of the bull kelp forests and the return of sufficient food to support abalone survival and reproduction.

Also, in December 2017, the Commission considered alternatives to increasing or removing the take restrictions on the recreational PSU harvest, with the goal of supporting possible restoration of naturally occurring kelp along the environmentally impacted areas. In April 2018, the Commission adopted the emergency rule to significantly increase take of PSU and the emergency regulation went into effect on May 10, 2018. In February 2019, the increased take limit was adopted through regular rulemaking by the Commission.

In February 2020, the Commission adopted an emergency rule allowing unlimited take of PSU by hand or hand-held tools inside Caspar Cove, Mendocino County to help Department staff scope the feasibility of population control in a new study.

Existence of an Emergency and Need for Immediate Action

The Commission considered the following factors in determining whether an emergency exists: The magnitude of potential harm; the existence of a crisis situation; the immediacy of the need; and whether the anticipation of harm has a basis firmer than simple speculation. All available information shows that the ecological conditions in Northern California continues to be poor; the PSU overpopulation is still severe. The COVID-19 pandemic has significantly constrained the recreational diver community's participation in the Caspar Cove urchin control experiment and work to date is inadequate to assess the effectiveness of this method to help protect and restore kelp. If the urchin control study in Caspar Cove is to stop because the current emergency rule expires, little useful information will have been generated by this effort and high PSU abundance will continued to suppress kelp growth in the cove.

Proposed Action by the Commission

The Commission proposes the readoption of Section 29.06 that is the same as previously adopted.

IV. 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) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (b) Nondiscretionary Costs/Savings to Local Agencies: None.
- (c) Programs Mandated on Local Agencies or School Districts: None.
- (d) 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.
- (e) Effect on Housing Costs: None.

V. Readoption Criteria

1) Same as or Substantially Equivalent

Pursuant to Government Code Section 11346.1(h), the text of a readopted “emergency regulation that is the same as or substantially equivalent to an emergency regulation previously adopted by that agency.” The language proposed for this rulemaking is the same as the language of the original emergency regulation.

2) Substantial Progress

Government Code Section 11346.1(h) specifies “Readoption shall be permitted only if the agency has made substantial progress and proceeded with diligence to comply with subdivision (e)” [Sections 11346.2 through 11347.3 , inclusive].

A rulemaking in compliance with these sections is currently ongoing and scheduled for public notice towards the end of 2020.

VI. Authority and Reference

The Commission proposes this emergency action pursuant to the authority vested by sections 200, 205, and 399 of the Fish and Game Code and to implement, interpret, or make more specific sections 200, 205, and 399 of said code.

VII. Section 399 Finding

Pursuant to Section 399 of the Fish and Game Code, the Commission finds that the adoption of this regulation is necessary for the immediate conservation, preservation, or protection of birds, mammals, reptiles, or fish.

Informative Digest

The California Fish and Game Commission (Commission) adopted Section 29.06, Purple Sea Urchin, as an emergency rulemaking abolishing daily bag limit for Purple Sea Urchin (PSU) taken by hand or hand-held tools inside Caspar Cove, Mendocino County, effective on March 17, 2020.

The emergency rule is due to expire on September 14, 2020 if a readoption is not filed. A readoption is necessary to ensure that the Department can continue to collect the data it needs to obtain necessary information on a controlled study supported by the California Department of Fish and Wildlife (Department) and the California Ocean Protection Council on the efficacy of PSU population control. Commission and Department staff are currently developing a regular rulemaking package that would remove the daily recreational bag limit for PSU in Caspar Cove. However, the development of that proposal is dependent on the data currently being collected from Caspar Cove, which will occur only if the emergency rule is readopted.

Proposed Regulatory Action:

The regulation temporarily abolishes the daily bag limit for PSUs inside Caspar Cove.

Benefits of the Regulation to the State's Environment:

The Commission anticipates benefits to the State's environment by the sustainable management of California's ocean resources. The increased take for the recreational purple sea urchin harvest, with the goal of supporting restoration of naturally occurring kelp inside Caspar Cove, is critical to the recovery of Northern California's kelp forest ecosystem.

Consistency and Compatibility with Existing State Regulations:

The Legislature has delegated authority to the Commission to promulgate sport fishing regulations (Fish and Game Code, sections 200 and 205) as well as authority to promulgate corresponding emergency regulations as necessary (Fish and Game Code, Section 399). No other state agency has the authority to promulgate such regulations. The Commission has conducted a search of Title 14, California Code of Regulations (CCR) and determined that the proposed regulation is neither inconsistent nor incompatible with existing State regulations, and that the proposed regulation is consistent with other sport fishing regulations and marine protected area regulations in Title 14, CCR.