

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 Abalone Closure

I. Dates of Statements of Reasons

- (a) Initial Statement of Reasons                      Date: July 20, 2020
- (b) Final Statement of Reasons                      Date: December 30, 2020

II. Dates and Locations of Scheduled Hearings

- (a) Notice Hearing  
Date: August 19, 2020                                      Location: Teleconference
- (b) Discussion Hearing  
Date: October 14, 2020                                      Location: Teleconference
- (c) Adoption Hearing  
Date: December 9, 2020                                      Location: Teleconference

III. Update

At its December 9, 2020 meeting, the Fish and Game Commission (Commission) adopted the proposed regulations, as set forth in an Initial Statement of Reasons dated July 20, 2020. The adopted amendment to Section 29.15, Abalone, extends the closure of the recreational red abalone fishery until April 1, 2026.

No modifications were made to the originally proposed regulatory language in the Initial Statement of Reasons. 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.

An update is made to a citation used in the Initial Statement of Reasons. At the time the document was drafted, the kelp coverage data based on aerial photography referenced as “McPherson, Finger, Housekeeper, Bell, Carr, Rogers-Bennett, & Kudela. 2020. Paper Under Review (Analyzes kelp coverage data gathered from Northern California from 1985-2019)” was expected to be incorporated into a peer-reviewed journal article by the time this Final Statement of Reasons is finalized. However, at this time the paper is still under review, and the Department of Fish and Wildlife (Department) does not have access to the document. The reference instead should have been “Rogers-Bennett, Laura, personal communication, 2020.” since the Department relied on the personal knowledge and confidence that its internal expert has regarding the information cited.

Accordingly, citation to Figure 1 is changed to the following:

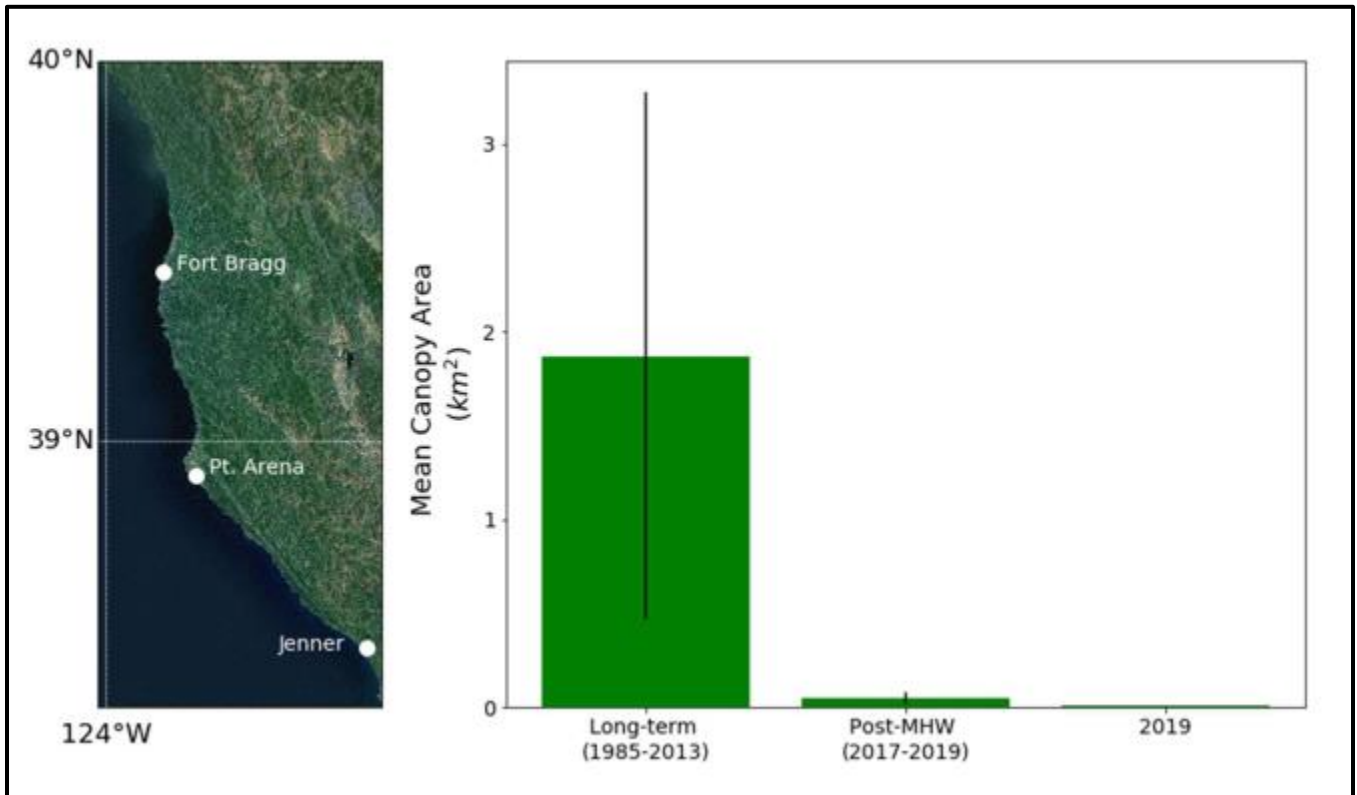


Figure 1. Mean Bull Kelp Coverage in Northern California in km<sup>2</sup> before Marine Heat Wave (MHW), after MHW, and in 2019 (Source: Laura Roger-Bennett, personal communication, 2020).

Furthermore, the Citation as “McPherson, Finger, Housekeeper, Bell, Carr, Rogers-Bennett, & Kudela. 2020. Paper Under Review (Analyzes kelp coverage data gathered from Northern California from 1985-2019)” is removed from “Identification of Reports or Documents Supporting Regulation Change” since the pending article itself is not available and was incorrectly included as a document relied upon. This is a change to the citation only. Neither the nature nor the substance of the underlying data has changed, and the edit does not affect the proposed regulatory language nor any of its supporting arguments.

IV. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations

Several commenters questioned the need for a full closure of the fishery, and several commenters stated their support of the proposed closure. As noted in Attachment 1, other options presented by commenters included the idea of a *de minimis* fishery or other management actions consistent with the Abalone Recovery and Management Plan (ARMP) or consideration towards a Fishery Management Plan (FMP).

V. Location and Index of Rulemaking File

A rulemaking file with attached file index is maintained at

California Fish and Game Commission  
 1416 Ninth Street  
 Sacramento, CA 95814

VI. Location of Department Files

Department of Fish and Wildlife  
1416 Ninth Street  
Sacramento, CA 95814

## VII. 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.

### (b) No Change Alternative

Without the proposed regulatory change, the red abalone fishery will be open to recreational take in 2021 to the detriment of the red abalone population recovery.

### (c) Consideration of Alternatives

In view of information currently possessed, no 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.

## VIII. 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 will not impact compliance costs or fishery activity due to an 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

## **Updated** 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.

### **UPDATE**

**At its December 9, 2020 meeting, the Commission adopted regulations as set forth in the Initial Statement of Reasons dated July 20, 2020. The adopted amendment to Section 29.15, Abalone, extends the closure of the recreational red abalone fishery from 2021 until April 1, 2026.**

**No modifications were made to the originally proposed regulatory language in the Initial Statement of Reasons. 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. However, the Citation as "McPherson, Finger, Housekeeper, Bell, Carr, Rogers-Bennett, & Kudela. 2020. Paper Under Review (Analyzes kelp coverage data gathered from Northern California from 1985-2019)" is changed to "Rogers-Bennett, Laura, personal communication, 2020" for Figure 1 regarding bull kelp coverage based on satellite imagery. This is because this document was expected to be incorporated into a peer-reviewed journal article by the time this Final Statement of Reasons is finalized. However, at this time the paper is still under review, and the Department of Fish and Wildlife (Department) does not have access to the document. The reference instead should have been "Rogers-Bennett, Laura, personal communication, 2020." since the Department relied on the personal knowledge and confidence that its internal expert has regarding the information cited.**

**The reference is also removed from “Identification of Reports or Documents Supporting Regulation Change.” This change is not substantive and does not change the proposed regulatory language nor any of its justifications.**