

State of California
Fish and Game Commission
Final Statement of Reasons for Regulatory Action

Amend Section 29.06
Title 14, California Code of Regulations
(Certificate of Compliance)
Re: Recreational Sea Urchin Bag Limit Exemption

I. Dates of Statements of Reasons

- (a) Initial Statement of Reasons Date: September 24, 2020
- (b) Final Statement of Reasons Date: December 18, 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 29.06 exempts recreational dive take of purple sea urchin in Caspar Cove, Mendocino County, and at Tanker Reef, Monterey County, as well as red sea urchin at Tanker Reef, Monterey, from any daily bag limit until April 1, 2024.

This is a certificate of compliance rulemaking to make permanent the emergency regulations effective March 17, 2020 (OAL file # 2020-0309-02E) and extended by Executive Orders N-40-20 and N-71-20 expiring January 9, 2021. A 90-day re-adoption was filed with the Office of Administrative Law on December 21, 2020. 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.

A request was made by a stakeholder to correct the citation to Figure 2, which forms part of the background information for this rulemaking. The dataset itself has not changed, and the update to the citation does not change the regulatory language or any of its underlying justifications. The figure is updated to the following:

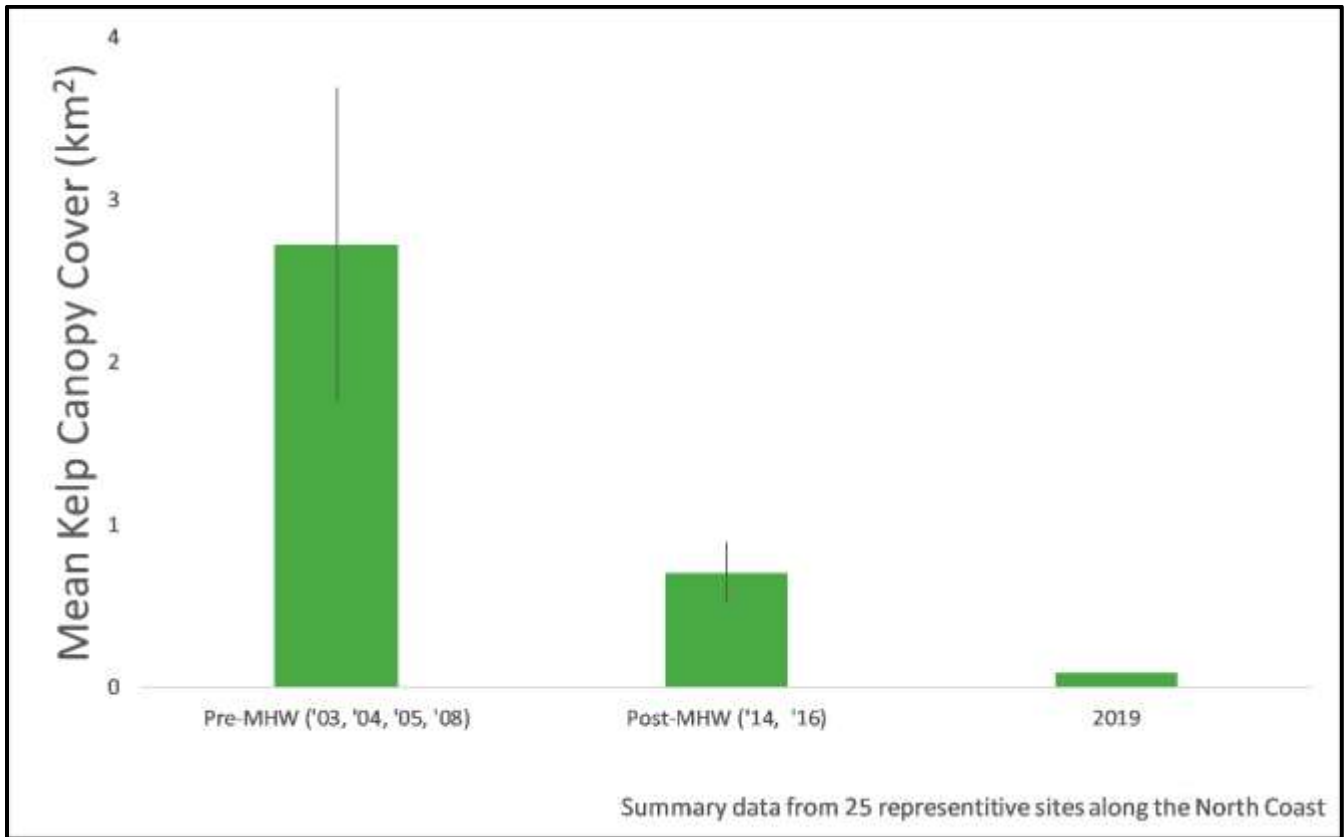


Figure 2. Bull Kelp Canopy Coverage developed from representative sites centered around Sonoma County coastline using aerial drones (Source: Soccomanno et al. 2020).

The citation “The Nature Conservancy. (2019) summary Data from 25 Representative Sites along the North Coast.” under section (f) of the Initial Statement of Reasons is updated to “Saccomanno, V.R., Eddy, N.E., Hohman, R., Klausmeyer, K.R., Cavanaugh, K.C., Bell, T.W., Hewerdine, W., et al. (2020). Manuscript in preparation.”

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

No direct opposition towards the proposed regulation was offered, and several instances of support are noted. See Attachment 1 for details.

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

- Tanker Reef – Do not include red sea urchin in proposed subsection 29.06(d)(2) regarding unlimited take at Tanker Reef.

The Department considered only authorizing purple sea urchin take at Tanker Reef, consistent with the provisions for Caspar Cove in subsection 29.06 (d)(1), as purple sea urchin is the primary species causing excessive overgrazing, and California has an active commercial red sea urchin fishery. However, recent studies suggest that even if all purple sea urchin are removed, red sea urchin alone still would have the potential to overgraze a reef, which could undermine the restoration effort as intended. The Department has determined that there is no commercial red sea urchin in the area and thus red sea urchin take poses a low risk of impact to the state's commercial fishery. Furthermore, due to the temporary nature of the proposal established through inclusion of the sunset date, this proposal was rejected in the interest of effectively testing urchin removals for kelp recovery at Tanker Reef.

- Add a third geographic location to subsection 29.06(d) in Monterey County within a marine protected area (MPA)

The state also considered allowing recreational culling inside MPAs as a result of queries and comments made public meetings, but ultimately declined to do so in the immediate future. The state has serious concerns over the impact that large-scale culling by recreational divers may have on other living resources inside MPAs, which are protected by separate regulations in Section 632. This would require amending regulations in Section 632, would result in increased enforcement burdens, and would be inconsistent with state policy regarding take in MPAs to date. Information gathering inside nearby MPAs will be accomplished through small-scale research activities conducted by California Reef Check under the tighter control and oversight of a scientific collecting permit issued by the Department rather than unlimited recreational take without the same controls.

(b) No Change Alternative

Without the proposed regulatory change, the state will not be able to test the prospect of restoring kelp forests through recreational dive effort.

(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 proposed regulatory action will extend and expand an existing kelp habitat restoration program that will help to support 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 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; 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 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.

(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

Updated 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 driven 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 the 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 hand-held tools due to the risk 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 steps 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 result from the test sites will help inform future kelp restoration projects. The proposal can also potentially contribute to the overall statewide kelp restoration effort.

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.

UPDATE

At its December 9, 2020 meeting, the Commission adopted regulations as set forth in the Initial Statement of Reasons dated September 24, 2020. The adopted amendment to Section 29.06 exempts recreational dive take of purple sea urchin in Caspar Cove, Mendocino County, and at Tanker Reef, Monterey County, as well as red sea urchin at Tanker Reef, Monterey, from any daily bag limit until April 1, 2024.

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. In response to stakeholder input, the citation “The Nature Conservancy. (2019) summary Data from 25 Representative Sites along the North Coast.” is updated to “Saccomanno, V.R., Eddy, N.E., Hohman, R., Klausmeyer, K.R., Cavanaugh, K.C., Bell, T.W., Hewerdine, W., et al. (2020). Manuscript in preparation.” All in-text citations, including citation for Figure 2, are updated. The change is not substantive.