

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 Section 29.06, Title 14, California Code of Regulations (CCR), relating recreational sea urchin bag limit exemption.

Informative Digest/Policy Statement Overview

Unless otherwise specified, all section references in this document are to Title 14, CCR.

Current recreational urchin regulations in Section 29.06 specify bag and possession limits and methods of harvest for purple sea urchins. Subsection (d) provides specific exemptions to allow unlimited recreational 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, until April 1, 2024.

Culling efforts at Caspar Cove were initiated by the public in July 2020. Due to the COVID-19 pandemic, mobilization of recreational effort has been more challenging than originally anticipated, and removal and monitoring efforts were significantly disrupted. Allowing for continued restoration efforts at Caspar Cove for another five years will provide essential data to inform whether urchin removal by recreational divers on the North Coast represents a viable option for bull kelp restoration.

Culling efforts at Tanker Reef were initiated by the public in April 2021. Unlike Caspar Cove, removals and monitoring efforts at Tanker Reef have been continuous and extensive. The focused restoration area at Tanker Reef has seen an initial detectable kelp response following urchin removal. Sunsetting the regulations and culling efforts at Tanker Reef in April 2024 will allow for completion of the post-restoration monitoring phase and production of a final report, detailing the restoration methods and results which will inform the development of the statewide Kelp Restoration and Management Plan (KRMP) and any potential future kelp restoration actions for the central coast. There is still some public interest to continue the work at Tanker Reef, however, and allowing the provision to sunset as originally intended would lead to dissatisfaction by participants who have contributed time and effort to the activities at Tanker Reef.

This regulatory proposal would amend Section 29.06 to extend the sunset date by five years at Caspar Cove (to 2029) to allow the continued evaluation of whether *in situ* urchin removals by recreational divers can serve as a potential bull kelp restoration tool. This proposal also includes an option to extend a portion of the Tanker Reef area based on stakeholder requests in two regulatory options, as follows:

- Option 1: Extend sunset date by five years (to April 1, 2029) at Caspar Cove only
- Option 2: Extend sunset date by five years (to April 1, 2029) at Caspar Cove and in a portion of the existing Tanker Reef area

Benefit of the Regulations

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 change would allow five more years to continue the sea urchin removal efforts and associated monitoring assessments at Caspar Cove. The primary goal of the extension is to ensure there is adequate time by the recreational divers to continue their sea urchin removal efforts to better understand the effects urchin removal has on barren reefs and kelp recruitment and growth. These urchin removal efforts are intended to explore

the efficacy of restoration tools for statewide restoration of kelp forests in California, which are valuable ecosystems that support our native unique marine species and are economically, and culturally important in California. For instance, kelp supports critical ecosystem services such as recreational and commercial fisheries and eco-tourism, which contribute significantly to the state's \$44 billion ocean economy. Additionally, California's Native American tribes, who have inhabited and stewarded the coast since time immemorial, also rely on kelp forest ecosystems for food, medicine, and ceremony. Restoration of kelp could also support species such as abalone, which are vulnerable and are no longer able to support a culturally and economically valuable fishery. Finally, this will also inform possible options for the Department's KRMP, which is currently under development.

For Tanker Reef, two regulatory options have been identified for the Commission, each with their own goals and benefits. Option 1 would allow the existing regulation to sunset, as originally intended. The principal goal and benefit of this option would be to initiate the post restoration monitoring phase in a timelier manner to better inform management of using recreational divers as a tool for kelp restoration. Option 2 would also allow the post restoration monitoring to begin in 2024 following the April sunset date, while keeping a portion of the reef open to the public for continued urchin removals for another five years, as requested by some members of the public.

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 reviewed its own regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission has searched the CCR for any regulations regarding the adoption of fishing regulations and has concluded that the proposed regulations are neither inconsistent nor incompatible with existing state regulation.

Public Participation

Comments Submitted by Mail or Email

It is requested, but not required, that written comments be submitted on or before February 1, 2024 at the address given below, or by email to FGC@fgc.ca.gov. Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on February 9, 2024. 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.

Meetings

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Handlery Hotel San Diego, 950 Hotel Circle North, San Diego, California, which will commence at 8:30 a.m. on Wednesday December 13, 2023 and may continue at 8:30 a.m., on December 14, 2023. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling

916-653-4899. Please refer to the Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Natural Resources Headquarters Building, Second Floor, 715 P Street Sacramento, California, which will commence at 8:30 a.m. on February 14, 2024 and may continue at 8:30 a.m., on February 15, 2024. This meeting will also include the opportunity to participate via webinar/teleconference. Instructions for participation in the webinar/teleconference hearing will be posted at www.fgc.ca.gov in advance of the meeting or may be obtained by calling 916-653-4899. Please refer to the Commission meeting agenda, which will be available at least 10 days prior to the meeting, for the most current information.

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. 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, 715 P 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 Jenn Bacon at FGC@fgc.ca.gov or at the preceding address or phone number. **Brian Owens, Senior Environmental Scientist, Department of Fish and Wildlife, has been designated to respond to questions on the substance of the proposed regulations. Mr. Owens can be reached at (562) 370-4770 or kelp@wildlife.ca.gov.**

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. 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 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 introduce compliance costs nor curtail economic activity within the state. The proposal aims to continue an existing exemption for a program run by

volunteers that seeks to restore and promote the long-term sustainability of kelp forest communities that are a vital component of recreational and commercial fisheries ecosystems and future marine resource-based economic activity.

- (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 expansion of businesses. 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 exemption designed to ensure the long-term sustainability and quality of kelp forest communities by removing a species (sea urchin) that when overpopulated, can have adverse impacts on kelp recruitment and growth. The long-term sustainability of kelp forest communities are a vital component of recreational and commercial fisheries ecosystems and future resource-based economic activity. The proposed regulations are not expected to affect worker safety.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative or 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 costs or savings to state agencies or impacts to federal funding are anticipated. No change in administration or enforcement costs or savings are anticipated by the Department or other state agencies. Consideration was given to keep administrative and enforcement costs within existing budgets. The Department may experience a continued small increase in license revenue as divers who choose to participate in urchin removal would need to purchase a sportfishing license if they do not already possess one, but the cost of a license is not specifically due to this proposed regulatory change. The requirement to hold a sportfishing license to engage in recreational fishing is established in an existing regulation (pursuant to FGC Section 7145). Sportfishing licenses or 1-Day or 2-Day licenses, etc. are sold at various price points depending on state residence, age, veteran status, disabilities, and other considerations.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

No nondiscretionary costs or savings to local agencies are anticipated. However, continued positive tax revenue impacts are expected depending on the regulatory option that would be selected. Recreational urchin diving expenditures in the retail, food and accommodations, automotive service and fuel, outdoor recreational merchandise sales/rent/lease, and recreational services sectors generate local sales and transient occupancy tax for local governments throughout California (See STD399 and Addendum). Overall, if the sunset date is extended in both sites, the continuation of the slightly elevated number of dive visits per

year are projected to continue to contribute to local economies in Mendocino and Monterey counties. Only if the sunset for the existing Tanker Reef regulation is not extended could a small reduction in dive visits be expected.

(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

The Commission does not anticipate any adverse impacts 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: **November 21, 2023**

Melissa Miller-Henson
Executive Director