

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

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

I. Dates of Statements of Reasons

- (a) Initial Statement of Reasons Date: August 25, 2023
- (b) Pre-adoption Statement of Reasons Date: February 1, 2024
- (c) Final Statement of Reasons Date: February 16, 2024

II. Dates and Locations of Scheduled Hearings

(a) Notice Hearing

Date: October 12, 2023 Location: San Jose, CA

(b) Discussion Hearing

Date: December 14, 2023 Location: San Diego, CA

(c) Adoption Hearing

Date: February 14, 2024 Location: Sacramento, CA

III. Update

At its February 14, 2024 meeting, the Fish and Game Commission (Commission) chose Option 1, and adopted the proposed amendment to subsection 29.06(d)(1) and did not amend subsection 29.06(d)(2).

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

There were 36 public comments received during the public comment period. These 36 comments are described and responded to in the table of Public Comment Responses (see Appendix A).

V. Description of Reasonable Alternatives to Regulatory Action

(a) Alternatives to Regulation Change

The Department considered an option to extend the sunset date for Tanker Reef for five years (until 2029) to allow ongoing urchin removals at the request of participants in the removal efforts at the site (Option 3). There is still some public interest to continue the work at Tanker Reef and extension for the entire site would provide a continuation of existing opportunities for the public to continue clearing urchins in the existing regulatory boundary, which maintains a much larger area than as proposed for reduction in Option 2.

If the sunset date at Tanker Reef was extended, the post-restoration monitoring would be significantly delayed. Post-restoration monitoring is needed to inform kelp forest resource management, especially the Kelp Restoration and Management Plan. Continuation of urchin culling within the entirety of the existing regulatory boundary at Tanker Reef limits the assessment of the effort, due to an inability to ensure the existing “cleared” quadrant would not be impacted by continual maintenance of recreational divers.

Finally, preliminary data from a study conducted by the Department and Monterey Bay National Marine Sanctuary divers demonstrates that the mudstone substrate at Tanker Reef is friable, and errant strikes can directly damage the soft substrate and some non-target organisms on the underlying reef habitat. However, training on responsible culling practices being implemented by the dive community may mitigate these impacts in the field. Should this be extended, other areas on the reef not previously worked on by recreational divers could see more urchin culling activities on a larger scale, therefore increasing the likelihood of habitat damage.

Note that at the October 2023 notice hearing, the Commission was presented with three options. After a discussion, the Commission directed staff to go to notice with options 1 and 2, only.

No other alternatives have been identified by or brought to the attention of Commission staff to date that would have the same desired regulatory effect.

(b) No Change Alternative

Without the proposed regulation change, unlimited harvest at the two designated areas would no longer be permitted. The recreational bag limit would revert to a daily bag limit of 35 urchins per species in Monterey County and a daily bag limit of 40 gallons in Mendocino County. The monitoring and associated data collected on large scale urchin removals from barren reefs would cease, which would hinder management's ability to better understand the utility of this as a potential tool for future kelp restoration plans for north and central coast reef habitats.

(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.

(d) Description of Reasonable Alternatives that Would Lessen Adverse Impact on Small Business

None.

VI. 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 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 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 exemption in Mendocino County that is 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 is a vital component of recreational and commercial fisheries ecosystems and future resource-based economic activity.

(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 keeping 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. 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). With the sunset date extended in Mendocino County, the continuation of the slightly elevated number of dive visits per year is projected to continue to contribute to local economies.

(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

Unless otherwise specified, all section references in this document are to Title 14 of the California Code of Regulations (CCR).

Kelp forms the backbone of many biodiverse subtidal communities along the northern and central California coast. However, its abundance has decreased significantly in northern California and in some parts of central California since 2014, in large part due to the proliferation of sea urchins. In 2020, the Fish and Game Commission (Commission) amended Section 29.06 to exempt the recreational take of purple sea urchin in Caspar Cove, Mendocino County, and at Tanker Reef, Monterey County, from any take limit until April 1, 2024. The Commission also exempted all recreational take of red sea urchin at Tanker Reef, Monterey, until April 1, 2024. The exemptions were designed to explore the efficacy and feasibility of kelp restoration through urchin culling from recreational divers, as well as the potential environmental impact from such culling activities.

Since the take limit exemptions first came into effect, divers self-reported culling efforts at Tanker Reef, as of July 27, 2023, have resulted in the removal of over 600,000 sea urchins, with the restoration area experiencing notable kelp recovery. Culling effort at Caspar Cove, however, faced various challenges due to the remoteness of the site, which were further exacerbated by the ongoing COVID-19 pandemic. Divers self-reported removing approximately 130,000 sea urchins as of July 27, 2023.

The Commission considered extending the sunset date of the exemption at Caspar Cove for another five years until 2029. A five-year extension at Caspar Cove would provide sufficient time to collect additional data to inform the efficacy and feasibility of urchin removals as a viable tool for kelp recovery. There is enough public interest and support to continue the urchin removals at Caspar Cove to warrant continuing these efforts.

Unlike Caspar Cove, removals and monitoring efforts at Tanker Reef have been continuous and extensive. Sunsetting the exemption at this location allows the state and partners to complete monitoring, data analyses, and ultimately incorporating the knowledge into the statewide Kelp Restoration and Management Plan. However, there has been desire from the public to continue the restoration effort. As such, the potential extension for the Tanker Reef exemptions under this proposal included two options:

- 1) Allow the existing provision to expire April 1, 2024, as defined in regulation; and
- 2) Modify the boundaries and continue urchin removals until April 1, 2029.

Benefits of the Proposed Regulation

The proposed amendments to Section 29.06 will provide the state and the public more time to implement and monitor the efficacy of urchin-culling in Caspar Cove. The adopted regulations (option 1) allow the state to complete its assessment of Tanker Reef and incorporate lessons learned into statewide kelp restoration efforts as soon as possible.

Consistency and Compatibility with Existing State 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 regulations.

UPDATE:

At the February 14-15, 2024 meeting, The Commission chose Option 1, and adopted the proposed amendment to subsection 29.06(d), as in Title 14 of the California Code of Regulations as set forth in the attached approved regulatory language. There were no other changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

Appendix A. Public comment responses to recreational sea urchin bag limits amendments for Caspar Cove and Tanker Reef.

#	Name, Format, Date	Public Comment	California Fish and Game Commission Response
1a	Keith Rootsart, Written, 02/01/2024	The goal of culling urchins is to restore kelp, and allowing urchins to re-invade and recreate an urchin barren is counter to that goal.	Following the December 2020 California Fish and Game Commission (Commission) meeting, the Commission adopted amendments to 14 CCR section 29.06 which extended the temporary exemption on the recreational bag limit for sea urchins at Caspar Cove and also added Tanker Reef. The amendments established a sunset date for April 1, 2024. The intent of the amendment and three-year extension was to evaluate the efficacy of community-led in-water urchin culling activities and report findings, as well as evaluate the potential ecological impacts from in-water urchin culling methods for the central and northern California regions. Ultimately, the temporary regulations were intended to inform future management.
1b	Keith Rootsart, Written, 02/01/2024	The public was purportedly promised by the Department that the culling project could continue if it is successful. The sunseting is being done without consultation with the public and has led to the exodus of some of the most avid divers.	See response to Comment 1a.
1c	Keith Rootsart, Written, 02/01/2024	The previously culled grid is currently being monitored but can be culled again to preserve kelp stands.	The Commission chose Option 1, which allows the bag limit exemption for Tanker Reef to sunset as originally intended. Should the commentor wish to work in the grid again after post restoration monitoring is complete, this could be pursued through application for a Scientific Collecting Permit (SCP).
1d	Keith Rootsart, Written, 02/01/2024	The current boundary is not enforceable, the whole time during the execution of the culling project divers have only been approached once. The boundary can be reduced to 25% of its current size to be more enforceable.	The current boundary was designed to be enforceable by Department officers by including visible landmarks for the eastern and western boundaries. Arbitrarily shrinking the boundaries without using shore-based landmarks or latitude/longitude lines to whole minutes or degrees, will make it more difficult to enforce. Additionally, the lack of interaction experienced by the commenter does not mean the regulations are not being actively enforced nor does it make the boundaries less enforceable.
1e	Keith Rootsart, Written, 02/01/2024	Moving to a new area will force the project to restart from scratch. Due to the perennial nature of kelp, the recovery will be slow.	The regulations were always intended to sunset after three years, or else a sunset provision would not have been included.

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#	Name, Format, Date	Public Comment	California Fish and Game Commission Response
1f	Keith Rootsart, Written, 02/01/2024	Due to the dominant northwest swell direction, the proposed Option #2 project area will need to have kelp manually planted. Such an endeavor requires divers to obtain SCP and is unlikely to succeed. As such divers will not be culling in the modified boundary under Option 2.	See response to Comment 1c.
1g	Keith Rootsart, Written, 02/01/2024	Having a better area, obtaining more funding, and recruiting more divers will help improve diver participation. As long as Tanker Reef is available, divers can find a way to continue culling urchins without interfering with post-restoration monitoring. Divers may return to culling urchins under Decadal Management Review (DMR) Petition 2023-23 in April 2025 if the current exemption expires.	See response to Comment 1c. Reference to the DMR petition is outside of the scope of this rulemaking.
1h	Keith Rootsart, Written, 02/01/2024	Urchin feeding behavior is highly variable and cryptic. Regardless, video footage taken over the course of the project show dramatic changes due to culling.	The Commission would like to receive any future reports from the commenter as more data is collected and analyzed (e.g., video analysis) after the culling is complete, on how the system responded before, during and after urchin culling.
1i	Keith Rootsart, Written, 02/01/2024	Commentor hopes to restore 2000 acres of kelp by 2030. Commentor also hopes to achieve 5000 dives per year. The future granite substrate will be much easier to cull than the current soft substrate at Tanker Reef. Permission and funding will increase participation.	The Commenter is referring to proposed work outside of Tanker Reef and is beyond the scope of this rulemaking.
1j	Keith Rootsart, Written, 02/01/2024	Commentor acknowledges that, as their effort gained momentum, their goal went from keeping urchin density below a certain threshold in a specified grid to growing a kelp forest around the grid. To that end, the commentor has applied for a restoration management permit, an SCP, and filed a petition with the Commission to cull urchins inside several State Marine Conservation Areas and Point Lobos.	See Response 1i.
1k	Keith Rootsart, Written, 02/01/2024	Commentor believes that the whole restoration project is a story of hope. Efforts by volunteers to date have resulted in an 11-acre kelp forest. In contrast, deliberately destroying the kelp forest will discourage people.	The Commission appreciates the efforts by the Commentor and the associated volunteers. The objective of including a sunset provision is not meant to deliberately destroy kelp, but

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			to quantify and evaluate the ecosystem response post restoration, to ultimately inform management.
1l	Keith Rootsart, Written, 02/01/2024	The divers want to restore kelp, while the scientists only want to observe and report, the state only allows culling in “the worst places,” and the National Marine Sanctuary does not want any culling at all. Moving forward there should be a Memorandum of Understanding.	The commenters perspective on the original site selection and culling strategies is noted. An SCP is the appropriate pathway to achieve similar objectives, rather than through a Memorandum of Understanding.
1m	Keith Rootsart, Written, 02/01/2024	Divers have been culling the areas around the monitored site. If they are to stop now, it will create an additional variable that has to be accounted for.	See response to comment 1a.
1n	Keith Rootsart, Written, 02/01/2024	Urchins and boring clams do the most substrate damage. Divers and boat captains already conduct practices that minimize substrate damage. Dr. Lonhart’s conclusion that substrate damage due to culling is without context since alternative methods such as prying urchins out are not studied. In 2022, an OPC-commissioned study found that culling is twice as efficient as collecting.	The evaluation of impacts to the reef by culling activities is still underway and only preliminary data has been provided to date.
1o	Keith Rootsart, Written, 02/01/2024	The problem is world-wide, and California should lead by example. It is possible to restore 1,100 miles of coastline.	The State of California is developing a Kelp Restoration and Management Plan (KRMP) that will include a framework for kelp restoration across the state. This process is currently underway.
1p	Keith Rootsart, Written, 02/01/2024	The commentator believes that we should try, and that Peter understands that culling effort must be sustained. Commentor hopes that commercial urchin fishermen will join.	See Response 1o.
1q	Keith Rootsart, Written, 02/01/2024	Urchin barrens are caused by the loss of otters that controlled the grazers. Abalones were subsequently fished out. Urchin barrens will persist until another perturbation occurs. We need to listen to tribal science to better understand baseline and conserve the ocean environment.	See Response 1o. Tribal engagement is and will continue to be incorporated throughout the development of the KRMP.

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#	Name, Format, Date	Public Comment	California Fish and Game Commission Response
1r	Keith Rootsart, Written, 02/01/2024	The concept that culling urchins will create spawning event originated from an effort in San Clemente when a patch of barren appeared right after culling. Considering the amount of time larvae spend in the ocean, the two events are unlikely to be related. According to the commentor's science advisor, more culling will lead to fewer urchins reproducing.	See Response 1o. Urchin culling and associated unintended consequences are actively being assessed.
1s	Keith Rootsart, Written, 02/01/2024	The chain spawning recreation observed in laboratory setting was never observed in nature. Sperms and eggs from smashed urchins are kept in gonads and likely eaten instead of released in the water. Smaller urchins that are difficult to spot and cull. But as more passes are made, eventually they will grow big enough to be culled.	See Response 1r.
1t	Keith Rootsart, Written, 02/01/2024	The sardine fishery in Monterey collapsed because of poor decisions by the Department. Fishing did not discriminate between sizes, and development of reduction for fish meal and fertilizer, supported by the state, further led to collapse.	This comment is not relevant to the proposed rulemaking
1u	Keith Rootsart, Written, 02/01/2024	Following years of culling, divers have learned to target urchin aggregates as well as to avoid environmental impact. Any impact is recorded through the diver data portal. Damages are inevitable, but the ecosystem benefit outweighs the harm. Commentor will learn more as effort continues.	See Response 1n.
1v	Keith Rootsart, Written, 02/01/2024	People look to governments and organizations to tackle issues like climate change that are too big for individuals. We must learn to act as caretakers.	This comment is outside the scope of this rulemaking, although the Commission appreciates this sentiment.
1w	Keith Rootsart, Written, 02/01/2024	<p>Commentor proposes to either:</p> <ol style="list-style-type: none"> 1. Extend sunseting for Tanker Reef exemption to April 1, 2029, and volunteer divers will coordinate with the state to monitor post-restoration reef; or 	The commenter presents two new alternative "options" for consideration. The commenter indicates a preference for "Option 3", and to a lesser extent, "Option 4." Both of these alternatives presented by the commenter support post restoration monitoring on the restoration grid. While neither of these alternatives were selected by the Commission, should they be of interest to a public member, either of the

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		2. Restart the Tanker Reef exemption on April 1, 2025, and sunset it again on April 1, 2029	alternatives described could be pursued through the SCP pathway.
1x	Keith Rootsart, Written, 02/01/2024	<p>Commentor states the “rules,” or goals, should be to:</p> <ol style="list-style-type: none"> 1. Suppress grazers 2. Grow kelp naturally 3. Prevent grazing 4. Monitor result 5. Inform decisionmakers 6. Change the rules <p>Option 1 violates 1, 3, 4, 5, and 6. This option will lead to the destruction of 20% of the remaining kelp forests in the area. Option 2 violates every rule; restoring it requires effort that is beyond the capacity of volunteer divers. The two proposals by the commentor will only violate Rule 3, since grazing will restart during monitoring.</p>	These “rules” were developed by the commentor and are not relevant to the rulemaking.
1y	Keith Rootsart, Written, 02/01/2024	Option 1 violates 1, 3, 4, 5, and 6. This option will lead to the destruction of 20% of the remaining kelp forests in the area. Option 2 violates every rule; restoring it requires effort that is beyond the capacity of volunteer divers. The two proposals by the commentor will only violate Rule 3, since grazing will restart during monitoring.	The Commission selected Option 1 and see response 1a and response 1x.
1z	Keith Rootsart, Written, 02/01/2024	In addition, the commentor requests that the enforcement boundary be reduced to only the west half of the site shallower than 50 feet, and an MOU regarding project objectives should be developed.	An SCP is the appropriate pathway to achieve what the commentor described.
1aa	Keith Rootsart, Written, 02/01/2024	You are using the word eradication wrong in the figure caption for Option 2. We won’t eradicate the urchins as the plan is to leave some behind.	The commentor caught a typo in the caption of Figure 1, which is appreciated. The word “eradication” should be replaced with “grazer suppression” or “grazing pressure reduction” or “urchin density reduction be successful in leading to reduced grazing pressure and facilitate kelp recovery” and will be corrected in subsequent documents.
2	Dave Chervin,	Supports Option 2 to extend the regulations another	Commentor’s support is noted.

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#	Name, Format, Date	Public Comment	California Fish and Game Commission Response
	Written, 02/08/2024	five years at Caspar Cove and Tanker Reef.	
3	Barbara Davis, Verbal, 02/14/2024	Supports continue culling at Tanker Reef and supports not culling in the restoration grid.	Commentor's support is noted.
4	Grant Downie, 02/14/2024	Supports keeping Caspar open to urchin culling; wants the Commission to be open to future petitions that allow commercial fishing in Caspar Cove.	Commentor's support is noted; petition requests are outside the scope of this rulemaking.
5	Tristin McHugh, Verbal, 02/14/2024	Supports keeping Caspar open to urchin culling.	Commentor's support is noted.
6	Robert Halem, Verbal, 02/14/2024	Supports Option 2 or leave the grid open to culling at a minimum.	Commenters support for option 2 is noted. See response to comment 1c.
7	Nancy Caruso, Verbal, 02/14/2023	Supports the continuation of both projects at Caspar Cove and Tanker Reef.	Commentor's support is noted.
8	Scott Parson, Verbal, 02/14/2023	Supports the continuation of urchin culling at Tanker Reef	Commenter's support is noted.
9	Brian Taniguchi, Verbal, 02/14/2023	Supports Tanker reef effort; hope the SCP process can look to other areas in Monterey Bay.	Commenter's support is noted.
10	Keith Rootsaert, Verbal, 02/14/2024	Does not support Option 1 or 2 and would like to see an additional option that keeps the restoration grid closed during post restoration monitoring and then opened back up for culling when needed. The remainder of Tanker Reef should be left open for urchin culling.	The Commission chose Option 1, which allows regulations at Tanker Reef to sunset as originally intended. This option was selected by the Commission to be consistent with the original intent of the regulations and transition the effort into the post-restoration monitoring phase, given that the urchin removal efforts at this site were not disrupted due to unforeseen

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			circumstances (e.g., COVID-19 pandemic). Implementation of the alternative option proposed by the commentor through the regulatory pathway present challenges with enforcement and communication and outreach with the public. There are other non-regulatory pathways to pursue the alternative option proposed by the commentor, which were outlined in the Department's presentation.