

Ms. Melissa Miller-Henson
Executive Director
California Fish and Game Commission
715 "P" St. 16th Floor
Sacramento, Ca 95814

February 1, 2024

Dear Ms. Miller-Henson:

Enclosed, please find two proposals:

- 1) Petition for Regulatory Change
- 2) Experimental Fishery Program

These proposals are intended to complement one another. We chose to do it this way out of respect for the California Fish and Game Commission (Commission) and the fact these instruments have been developed to support fishing.

Ours is an aging community. When abalone was closed in 1997, there were 101 commercial abalone divers. We recently were able to identify approximately 50> who are still active and interested. Of these individuals, we do not know how many might actually go fishing. But, with those who do, should the fishery reopen, we will soon know how many can still successfully participate.

Diving is difficult. We have divers with 10,000 to 40,000 hours underwater. There is one diver still diving sea urchins at the age of 80. Most of these divers are now age 60-70.

There are some advantages for the Department of Fish and Wildlife (Department) and Commission. First, these proposals could provide biological data which is currently not available. Second, there is a reported problem of \$25, million in organized crime poaching. The commercial divers,

in the field, watching out, will aid law enforcement. Third, a traditional fishery is restored. A win-win for all.

Thank you for your consideration of these proposals. We are also sending a copy of the Experimental Fishery Program proposal the Department in Monterey as directed.

If there are any questions, please contact me at your convenience.

Respectfully,

A handwritten signature in black ink, appearing to read "Steven Rebuck". The signature is fluid and cursive, with the first name "Steven" and last name "Rebuck" clearly distinguishable.

Steven L. Rebuck



Attachments

Cc: California Department of Fish and Wildlife
Monterey



Tracking Number: (2024-02)

To request a change to regulations under the authority of the California Fish and Game Commission (Commission), you are required to submit this completed form to: California Fish and Game Commission, (physical address) 1416 Ninth Street, Suite 1320, Sacramento, CA 95814, (mailing address) P.O. Box 944209, Sacramento, CA 94244-2090 or via email to FGC@fgc.ca.gov. Note: This form is not intended for listing petitions for threatened or endangered species (see Section 670.1 of Title 14).

Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission's authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or FGC@fgc.ca.gov.

SECTION I: Required Information.

Please be succinct. Responses for Section I should not exceed five pages

1. **Person or organization requesting the change (Required)**
Name of primary contact person: [Steven L. Rebeck (agent)]
Address: [REDACTED]
Telephone number: [REDACTED]
Email address: [REDACTED]
2. **Rulemaking Authority (Required) - Reference to the statutory or constitutional authority of the Commission to take the action requested:** [Section 29.15, Abalone 14CCR, S. 45, 100, 200, 203, 205, 206, 209, 210, 211, 215, 218, 219, 220, 265, 3990]
3. **Overview (Required) - Summarize the proposed changes to regulations:** [Restore commercial and recreational red abalone diving to San Miguel Island, Santa Barbara County, California south of San Francisco to pre-1998 status.]
4. **Rationale (Required) - Describe the problem and the reason for the proposed change:** [See attachment Rationale text]

SECTION II: Optional Information

5. **Date of Petition:** [February 1, 2024]
6. **Category of Proposed Change**
☒ Sport Fishing
☒ Commercial Fishing
☐ Hunting
☐ Other, please specify: [Click here to enter text]

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- ### SECTION 3: FGC Staff Only

FGC staff action:

- Tracking Number

FGC action:

- Tracking Number

- ☐
- Granted for consideration of regulation change**

Rationale and Overview by Steven L. Rebuck (Agent)

Senate Bill, 463 (Thompson) was passed by the California Legislature in 1997 and provided future management decision on abalone to the California Fish and Game Commission (FGC). FGC Section 5522 includes the following:

"(e) if the Commission determines that commercial fishing is an appropriate management measure, priority for participation in the fishery shall be given to those persons who held a commercial abalone permit during the 1996-97 permit year."

This Petition for Regulatory Change proposal is intended to:

- 1) Reopen the red abalone fishery at San Miguel Island, Santa Barbara County only.
- 2) Allow all former commercial abalone permit holders to participate. Qualifier: In 1997, the California Abalone Association (CAA) had a list of 101 permitted commercial abalone divers. Some DFG documents identified 105 divers. We are currently seeking out those former divers who are still living and have interest in resuming this fishery. As of January 31, 2024, we have identified 50+ former abalone divers who qualify under the terms identified above.
- 3) We propose that the identified Total Allowable Catch (TAC) for San Miguel Island (SMI) as identified in the Abalone Recovery and Management Plan (ARMP) Appendix H (AH) of 15,000 red abalone will be allocated equally between these divers. Each former diver would be permitted to harvest a personally identified share of the TAC between August 1, 2024 to December 31, 2024. Once this season is completed, depending on success, the resource may be reevaluated and the TAC raised or lowered as need should a

2025 fishery be considered. Revision of Fish and Game Code/ Regulations may be considered, early 2025.

- 4) Divers will be obligated to photograph using cell phone cameras, all individual abalone harvested. These data will be collected and transmitted promptly (Cell reception permitting) to DFW biological and law enforcement agents per this agreement.

RATIONALE/HISTORY/JUSTIFICATION/BIOLOGICAL FISHERY/TERRITORIAL USE RIGHTS/INDIVIDUAL TRANSFERABLE QUOTA

" A biomass estimate of 3 million emergent abalone indicate a harvestable population of 75,000 to 150,000 red abalone at SMI. An initial total allowable catch (TAC) of 15,000 red abalone is proposed at SMI. Harvesting 10-20% of those abalone falls within the slot size should have a negligible effect on the population as a whole." Abalone Recovery and Management Plan, Appendix H, Page H-9

RATIONALE

- 1) The range of red abalone, *Haliotis rufescens* is Sunset Bay, Oregon to Bahia Tortugas, Baja, Mexico._1/.
- 2) Red abalone, *Haliotis rufescens*, are not a State or Federal recognized threatened and/or endangered species.
- 3) Although this proposal is not an "Experimental Fishery" as defined by the California Fisheries Innovation Act of 2018 and Marine Fisheries Experimental Fishing Permits (2018), we propose to reestablish former abalone fishing regulations used prior to 1998, pursuant to the FGC citation above.
- 4) We propose using Abalone Advisory Group (AAG) Fishery Management Option A: Red Abalone Demonstration Fishery. _2/.
- 5) The former commercial abalone divers of California support the use of the Abalone Recovery and Management Plan (ARMP) Appendix H (A-H)_3/ as a management vehicle to reopen San Miguel Island, Santa Barbara County, for commercial and recreational red abalone diving using a Total Allowable Catch (TAC) limit of 15,000 for commercial red abalone fishing.

- 6) Multiple studies have been produced demonstrating the possibility of reestablishing commercial and recreational fisheries at San Miguel Island:(SUPPORT DOCUMENTS: 4/5/6/7/8)

HISTORY

Drafting of what became A-H began in August 19, 2005 with the submission of a plan titled: "Components of an Experimental Commercial Red Abalone Fishery", Steven L. Rebuck, to the California Fish and Game Commission (Commission). Commission President Michael Flores requested staff (John Ugoretz) include this submission into the ARMP discussion. By September 2005, the California Abalone Association (CAA) had created a subcommittee to explore and draft a plan for San Miguel Island. A DRAFT of this plan was submitted to the Commission September 30, 2005. At this meeting, the Commission directed staff to work with CAA on this project. Originally, this effort was title Alternative 8. Within a couple years, a Technical Panel (TP) was formed and began drafting language for what became A-H. *_6/ followed by a Review Panel_7/. This effort coincided with the appointment of the Abalone Advisory Group (AAG).*

JUSTIFICATION

A-H, as crafted, and included with the ARMP, offers a Fishery Management Plan (FMP) for SMI. A-H contains the following:

- * Suggests use of ARMP required Index Sites, in coordination with California Department of Fish and Wildlife (DFW), Director's Abalone Advisory Committee (DAAC), National Park Service (NPS)/Kelp Forest Monitoring Program (KMP), and California Abalone Association (CAA).
- * Identifies Collaborative Abalone Research Program (CARP) and Adams Cove, Castle Rock, and Crooks Point as Index Sites. CAA had previously installed on monitoring site at Tyler Bight, monitored by NPS/KMP.
- *Identifies a Total Allowable Catch (TAC) for both commercial and recreational abalone fishing for red abalone only.
- * Fisheries Management: Integrates Marine Protected Areas (MPAs) at SMI: Judith Rock, near Pt. Bennett, which includes Adams Cove.
- * Use of Position Indicating Transponders (PIT).

* Identifies Landing Taxes and Resource Rents.

*Creates Fishery Dependent and Fishery Independent Data which DFW does not currently have.

* Creates a financial stream for DFW, management and law enforcement, which they currently does not have.

We propose a domestic use fishery only. No export out of the USA.

BIOLOGICAL FISHERY

As proposed by the California Department of Fish and Wildlife (DFW) this group of former commercial abalone divers support this concept.

- 1) All abalone harvested will be reported to DFW at the time of harvest. Photographs of ones fishing trip, location, time of day, dates, etc. will be reported, including Log Books.
- 2) Once a fishing trip is completed, the boat crew will contact DFW and report the estimated time of return to port.
- 3) Crew will meet with DFW biological team and/or law enforcement and allow them to examine all abalone harvested.
- 4) Once DFW biological team has examined and/or taken tissue samples, abalone may be marketed.
- 5) Catch reporting: Title 14, S 197, E-Tix, <http://etix.psmfc.org>

TERRITORIAL USE RIGHTS for FISHING (TURF)

"TURFs allocate exclusive harvest for one or more marine species in a specific area. TURFs are ideal for species like abalone that will not move beyond TURF boundaries, but they can be designed for more mobile species as well. TURFs may occur independently, or they may be part of a broader system of TURFs. Well designed networks of TURFs can be used to manage more complex fisheries, including those with mobile species or multiple groups of fishermen."

What are TURF Reserves?

"TURF Reserves are TURFs paired with no-take reserves, which are areas where no fishing is permitted. Theory and practice show that

fishermen have greater incentive to implement and enforce TURF Reserves because they directly benefit from the fish that spill over from no-take reserves to their TURF. The fishery management combination is growing in interest, allowing local government to reap the rewards of being responsible stewards of their fisheries."

(Source: Environmental Defense)

Individual Transferable Quota/Annual Catch Entitlement

Individual Transferable Quotas (ITQ) or Individual Fishery Quota (IFQ) are used in the United States and Internationally to manage fisheries. Commercial abalone divers are supportive of these concepts and propose transferability of permits be considered if there is support for an abalone fishery post 2024. Another concept being used successfully in New Zealand are Annual Catch Entitlement (ACE) which allows individual quota owners to lend or rent their existing quota allotments to other qualifying commercial fishermen.

SUPPORTING LITERATURE

1. Cox, Keith, 1962, California Abalones, Family Haliotidae, Fish Bulletin 118, California Department of Fish and Game.
2. Abalone Advisory Group Report, January 29, 2010, Management Options for Establishing a Potential Red Abalone Fishery at San Miguel Island, Presentation to the Marine Resources committee of the California fish and Game Commission, February 16, 2010.
3. Appendix H. Proposed Amendments to Alternative 1 in ARMP as Submitted by Commercial Constituents to the Fish and Game Commission, an amendment to the Abalone Recovery and Management Plan, Alternative 1.
4. Taniguchi, Ian, D. Stein, K. Lampson, The San Miguel Island Red Abalone Resource: Results of Survey Conducted from July-October 2007, Marine Invertebrate Management Project, DFG.
5. Jloa, Yan, L. Rogers-Bennett, P. Crone, J. Butler, April 10, 2009, Appendix H.
6. Appendix B: DFG San Miguel Island Red Abalone Surveys (2006, 2007, 2008).

7. Prince, Jerome, California Abalone Marketing Association, February 6, 2012/Revised May 30, 2012, Proposal for Red abalone Research Fishery at San Miguel Island (SMI).
8. Bren School, 2010, Economic Viability and Sustainable Management of a California Red Abalone Fishing Cooperative.
9. Schiel, David R., S. Gerrity, S Orchard, 2023, Allocations, quota and abalone fishery management: the Tragety of the commons revisited, New Zealand Journal of Marine and Freshwater Research.
10. Rebuck, Steven L., 2003, Towards an orderly fishery: Establishing Annual Catch Entitlements (ACE) and Individual Transferable Quota (ITQ) for harvest of red abalone, Submission to the California Fish and Game Commission. 2003.

Experimental Fishery Program (EFP)

Project Title: Subsistence Abalone Fishery at San Miguel Island, California, 2024

(Subsistence is defined as: the action or fact of maintaining or supporting oneself at a minimum level "the minimum income needed for subsistence." (Source: Google)

1) Applicant

*Name: Steven L. Rebuck

* Title and Affiliation: Agent for former commercial abalone divers with permits 1996-97.

*Mailing Address: PO Box 571, San Luis Obispo, CA 93406

* Email Address: ABSFORMAN@sbcglobal.net

Telephone Number: 895/540-1966

*GOID or CFL Number:NA

2) Entity Administrator: Same Repeat 1 list

3) Authorized Agents: See attached mailing list

* Name

* Title and Affiliation

* Mailing Address

*Email Address

*Telephone Number

GOID or CFL Number

Repeat all Agents: Same

B. Statement of Purpose: Resume commercial abalone fishing at San Miguel Island, Santa Barbara County, California

1-Describe the purpose and goals of the proposed project, including how the project meets or is consistent with the policies of Fish and Game Code (FGC) Section 7050:

*Experiment:

Commercial abalone divers will document their fishery using underwater Go-Pro cameras. Once catch is onboard the fishing vessel, fishermen will photograph their catch and forward data to Department of Fish and Wildlife biological and law enforcement. I-Pads may also be used to document catch as well as log books.

*Fishery Biological Research:

Documenting the catch will provide DFW with data which is currently unavailable to them: Sex, maturity, size, size frequency, health and other factors will be documented. Also, oral history of how the commercial abalone fishery operates can be capture. Some of these divers have up to 40,000 hours underwater over many decades of diving. Much of this experience remains unknown to scientific data collectors. This is educational information.

*Gather essential fishery information:

Go Pro cameras, Remote Operated Vehicles (ROVs), and cameral phones can revolutionize data collection. We propose to use these devices to collect biological data for research biologists, historians, sportsmen and others.

*_Implement a limited test fishery:

We propose to use the former commercial divers who had abalone permits in the 1996/97 season to fish and collect data. We also propose a season beginning August 1, 2024 and ending December 31, 2024.

*_Work with future approved participants to certify competency:

No divers are more competent to do this job than the former commercial abalone divers. We have identified

approximately 50% of these former divers who may still have the ability and equipment to fish abalone. These divers will help identify how many will be able to continue fishing in the future. Should the allocation of the ARMP/AH of 15,000 red abalone not be met, the balance of the TAC will remain in the water. Or, an in season adjustment in TAC may be advised.

*** Alternative Gear Testing:**

The commercial abalone fishery has evolved over an approximate 175 year history. Tech-Diving, NITROX, mixed-gas, and other innovations may be used in future diving operations, along with ROVs, GoPros, and camera phones.

*** Provide necessary information:**

Fishing operations will be limited to those who had active abalone permits in the 1996/97 abalone season. Regulations from this era are proposed for a 2024 season.

*** Work with CDFW Law Enforcement Division (LED):**

Divers agree to work with DFW Law Enforcement. This includes reporting potential poaching operations cited by DFW, 2014: "...organized criminal gangs poaching \$25,000,000. of abalone annually in California."

*** Work with future CDFW approved participants:**

Divers agree to work with DFW staff as required by DFW/FGC.

Secondary Goals

*** Provide experience:**

Former commercial divers have been recognized historically as "keen observers" of the abalone resource and fishery. (Bonnot, CDFG, 1948, et al).

* Expand outreach opportunities with other fisheries:
Individual Transferable Quota (ITQ) and Individual Fishery Quota (IFQ) are used in the United States and Internationally to manage and regulate commercial fisheries. The crab fishery in Alaska is a good domestic example.

2. Provide a list of proposed projects activities that are prohibited under current state fishing laws or regulations (cite the specific section number(s), if known, and the reasons to justify authorization (exemption) of those activities under the EFP:

A) California Fish and Game Commission, Section 5522 (e):
"If the commission determines that commercial fishing is an appropriate management measure, priority for participation in the fishery shall be given to those persons who held a commercial abalone permit during the 1996-97 permit year."

B) FGC Sec.4. Section 1022 is added to the Fish and Game Code to read:

1022. (a) the commission may authorize, for research, education, limited testing, data collection, compensation, fishing, conservation engineering, or exploratory fishing, or any combination of these purposes, an EFP to be issued by the department that authorizes commercial or recreational marine fishing activity otherwise prohibited by this code or any regulation adopted pursuant to this code, subject, at a minimum, to all of the following:

(1) Activities conducted under EFP shall be consistent with policies set forth in Section 7050 and any applicable fishery management plan.

We cite: Abalone Recovery and Management Plan, Appendix H as our example of a Fishery Management Plan (FMP) for red abalone at San Miguel Island.

a) Applicant is requesting authorization to target:
Resume red abalone commercial fishing at San Miguel Island only, August 1, 2024-December 31, 2024.

b) Mark devises:

Since 2005, the former abalone diver members of the California Abalone Association (CAA) have proposed to the California Fish and Game Commission (FGC) the use of a fixed tag to be used on all commercially caught abalone. These tags will include the divers name, permit number and any other relevant information. A fee of \$10. Per tag will be paid to DFW for the use of these tags. 15,000 tags at \$10. totals \$150,000. to DFW for monitoring a fishery.

c) Applicant is requesting:

To support the economic requirements of commercial fishing, we request that the abalone permit holders be allowed to produce "mixed loads" meaning they may fish sea urchin, crab or lobster--in season—along with their abalone catch.

C. Statement of Qualifications:

1. Lead and provide supervisory oversight for all activities of the permit under the authorization, standard terms, and special conditions. These divers are recognized, by statute, as being qualified for this job.

1. Experience to identification, methods, and protocols specific to the requested species:

Each of these divers have several decades of successful production of various species of abalone.

2. Obtain all appropriate authorizations and oversee quality control measures to assure conformance to the specified standards or requirements (e.g., take

appropriate measures to ensure, promote, and facilitate compliance):
DFW Law Enforcement is a formidable deterrent.

4. Train all persons operating under the permit:
Mentorship will be important to any future entrants to the fishery. This could also be used to educate recreational fishermen, reducing bar-cut problems for example.
3. Coordinate field activities and communicate findings with CDFW marine region:
Agree.
4. Collect, analyze, and transmit biological data gathering under the EFP to CDFW marine region:
Modern electronic devices: ROVs, Go-Pros, camera phones can enhance transmission of biological information.

D. Permit Application Type:

1. Tier 1

2. Request permit fee reduction option consideration:
Yes.

1. Has pre-application consultation with CDFW taken place with respect to this proposal? (Required for Tier 2 EFP, Tier 4 EFP, or permit fee reduction option):
No

E. Project Description:

Resume commercial red abalone fishing at San Miguel Island using only former commercial abalone divers.

1. A description of the experimental design and research plan, including specific procedures for data collection, storage, processing, and analysis; and a timeline for implementing the project, including, if applicable, when compensation fishing is expected to occur:
Commercial fishing to resume at San Miguel Island. Divers will document the fishery using underwater Go-Pro cameras to document their dives and camera phones and/or I-Pads to relay biological and law enforcement data to DFW personnel.

* Fishery/Biology:

Biological data will be provided by divers to DFW. Data which currently is nonexistent.

* Logbooks:

The use of Log Books is standard practice and may be replaced by electronic devices and tools like I-Pads.

* Samples detailed information about composition, quantities, sexes, reproductive status, size, weights of target species:

Divers will have access to an equal proportion of the Total Allowable Catch (TAC), as identified in ARMP Appendix H of 15,000 red abalone. A size limit of 7 $\frac{3}{4}$ inches is proposed. Season shall be August 1, 2024-December 31, 2024.

* Tag Recapture Study:

Tag have not been used on commercial abalone yet. Suggested tags would be placed on abalone through holes in their shells and stay attached through ultimate sales of these shells.

* Electronic Monitoring:

Go-Pro, I-Pad, camera phones as previously described.

***Biological Sampling:**

Phase 1—Dockside/Inshore configuration

Phase 2-Finalizing Individual Gear Configuration

Phase 3-Fishing

List of target Species:

1Red abalone only.

1. A list of incidental catch:

Misc. barnacles, boring sponges, etc.

2. A description of mechanisms that will be utilized to ensure any proposed harvest limits for target and incidentally caught species are not exceeded:

NA

3. A description of any potential impacts on existing fisheries, habitats, or possible incidental interactions with threatened, endangered, or protected species (e.g. sea turtles, marine mammals, and birds) that could occur as a result of this project:

NA

4. The type and amount of gear to be used, including gear specifications and design, and, if applicable, a description of any measures and/or devices that will be used to reduce bycatch:

NA

5. The location and timing of the project. The description must include trip specifications, such as fishing depth, anticipated number of trips, expected trip duration, and estimated number ...per day.

* San Miguel Island only.

* Trip limits as required by DFW.

- * Multi-day trips are standard practice.
- * Bag limits may be imposed by DFW.

F. Project Vessels. Provide vessel information:

Available EFP examples suggest 10 agents (fishermen) and 5 boats. We find nowhere in the California Fisheries Innovation Act of 2018 any existing limitation on how many participants (agents) nor any limitation on boats. Active participants and boats to be determined.

- * Vessel Name
- * Boat Registration Number or Documentation
- * Owner Name
- * Owner telephone number
- * Owner Address
- * Operator Name
- * Operator Address
- * Operator phone number

Repeat, owners and operators:
To be determined

G. Signatures:
To be determined

H. Application Fee Payment:
To be determined

List of former commercial abalone divers who had permits in 1996/97 season. This list created in January 2024 by phone calls, emails and personal communications.

(Prepared by: S. Rebuck. J. Baldwin, L. Marcus, J. Becker)

Name	Address	phone/email
Apodaca, Austin		
Askew, Robert		
Baldwin, Jeffery		
Becker, John		
Becker, Mark		
Bertelli, Robert		
Betts, Jerome		
Brooker, Craig		
Brubaker, Mark		

Canterbury, Steve

Charest, Pierre

Colgate, John

Conklin, Gary

Duncan, Robert

Gill, David

Grover, Doug

Harrington, Michael

Hastie, Bob

Hay, Bob

Herrin, Mark

Hooten, Bill

Kitahara, Mike

Kuphal, Steve

Liquornik, Harry

Marcus, Leonard

Marshall, James

McKinley, Bobby

Morgan, Ernie

Mulcahy, Tim

O'Brien, Jeremiah

Parkinson, Gaylord

Petterson, Cappy

Petterson, Curt

Ed Pierce

Price, Brian

Radon, Mike

Schmidt, Kenny

Shea, Bob

Shupe, Andy

Shupe, Bob

Shrout, Sam

Spur, David

Thompson, Don

Urquhart, Jim

S

Verhagen, Gary

Vogal, Harry

Voss, Chris

Woodcock, John

Zertuche, Raul

Zertuche, Ruben

Weakland, Paul