

Appendix B. Excerpts from Legal Documents Relating to Abalone

B.1 California State Constitution

B.1.1 Provision for Fish and Game Commission

Art. IV, Sec. 20. (a) The Legislature may provide for division of the State into fish and game districts and may protect fish and game in districts or parts of districts.

(b) There is a Fish and Game Commission of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for 6-year terms and until their successors are appointed and qualified. Appointment to fill a vacancy is for the unexpired portion of the term. The Legislature may delegate to the Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. A member of the Commission may be removed by concurrent resolution adopted by each house, a majority of the membership concurring.

B.1.2 Fish and Game Preservation Fund - Public Finance

Art. XVI, Sec. 9. Money collected under any state law relating to the protection or propagation of fish and game shall be used for activities relating thereto.

B.1.3 The Right of the People to Fish in State Waters

Art. I, Sec. 25. The people shall have the right to fish upon and from the public lands of the State and in the waters thereof, excepting upon lands set aside for fish hatcheries, and no land owned by the State shall ever be sold or transferred without reserving in the people the absolute right to fish thereupon; and no law shall ever be passed making it a crime for the people to enter upon the public lands within this State for the purpose of fishing in any water containing fish that have been planted therein by the State; provided, that the Legislature may by statute, provide for the season when and the conditions under which the different species of fish may be taken.

B.2. California Fish and Game Code

B.2.1 California Fish and Game Commission

§45. "Fish"

"Fish" means wild fish, mollusks, crustaceans, invertebrates, amphibians, including any part, spawn, or ova thereof.

§200. Commission's Power To Regulate Taking of Fish & Game

There is hereby delegated to the commission the power to regulate the taking or possession of birds, mammals, fish, amphibia, and reptiles to the extent and in the manner prescribed in this article.

No power is delegated to the commission by this article to regulate the taking, possessing, processing, or use of fish, amphibia, kelp, or other aquatic plants for commercial purposes, and no provision of this code relating or applying thereto, nor any regulation of the commission made pursuant to such provision, shall be affected by this article or any regulation made under this article.

§202. Exercise of Powers

The commission shall exercise its powers under this article by regulations made and promulgated pursuant to this article. Regulations adopted pursuant to this article shall not be subject to the time periods for the adoption, amendment, or repeal of regulations prescribed in Sections 11343.4, 11346.4, and 11346.8, and 11347.1 of the Government Code.

§203.1. Adopting of Regulations - Criteria

When adopting regulations pursuant to Section 203, the commission shall consider populations, habitat, food supplies, the welfare of individual animals, and other pertinent facts and testimony.

§205. Fish and Reptiles Regulations

Any regulation of the commission pursuant to this article which relates to fish, amphibia, and reptiles, may apply to all or any areas, districts, or portion thereof, at the discretion of the commission, and may do any or all of the following as to any or all species or subspecies:

- (a) Establish, extend, shorten, or abolish open seasons and closed seasons.
- (b) Establish, change, or abolish bag limits, possession limits, and size limits.
- (c) Establish and change areas or territorial limits for their taking.
- (d) Prescribe the manner and the means of taking.

§206. Fish, Amphibia and Reptiles Regulations Meetings

- (a) In addition to, or in conjunction with, other regular or special meetings the commission shall, at least every three years, hold meetings in the first 10 days of August, October, November, and December for the purpose of considering and adopting revisions to regulations relating to fish, amphibians, and reptiles. The commission shall alternate the locations of the August and December meetings between Los Angeles or Long Beach and Sacramento, and the October and November meetings between San Diego and Redding or Red Bluff.
- (b) At the August meeting, the commission shall receive recommendations for regulations from its own members and staff, the department, other public agencies, and the public.
- (c) At the October and November meetings, the commission shall devote time for open public discussion of proposed regulations presented at the August meeting. The department shall participate in this discussion by reviewing and presenting its findings regarding each regulation proposed by the public and by responding to objections raised pertaining to its proposed regulations. After considering the public discussion, the commission shall announce, prior to adjournment of the November meeting, the regulations it intends to add, amend, or repeal relating to fish, amphibia, and reptiles.
- (d) At the December meeting, the commission may choose to hear additional public discussion regarding the regulations it intends to adopt. At, or within 20 days after, the meeting, the commission shall add, amend, or repeal regulations relating to any recommendation received at the August meeting regarding fish, amphibia, and reptiles it deems necessary to preserve, properly utilize, and maintain each species or subspecies.

(e) Within 45 days after adoption, the department shall publish and distribute regulations adopted pursuant to this section.

§209. Meeting Notification

(a) The commission shall determine and give notice of the date and location of the first meeting required to be held during a year by Sections 206, 207, and 208 at least 60 days prior to that first meeting. The commission shall give notice of any change in the date or location of that first meeting at least 30 days prior to the meeting date.

(b) The commission shall cause to be published the notice required in subdivision (a) in each newspaper of general circulation, as defined in Section 6000 of the Government Code, with an average daily circulation of 50,000 or more.

(c) The commission shall set the dates of its meetings in order to provide maximum time for public review of proposed regulations consistent with the proper management of the species or subspecies affected. All meetings required by Sections 206, 207, and 208 shall be open to the public and, to the extent feasible, held in state facilities.

§210. Regulations; Distribution

(a) The commission shall provide copies of the regulations added, amended, or repealed pursuant to subdivision (e) of Section 206, subdivision (e) of Section 207, and subdivision (d) of Section 208 to each county clerk, each district attorney, and each judge of the superior court in the state.

(b) The commission and the department may do anything that is deemed necessary and proper to publicize and distribute regulations so that persons likely to be affected will be informed of them. The failure of the commission to provide any notice of its regulations, other than by filing them in accordance with Section 215, shall not impair the validity of the regulations.

(c) The department or the license agent may give a copy of the current applicable published regulations to each person issued a license at the time the license is issued.

(d) Notwithstanding any other provision of law, the commission and the department may contract with private entities to print regulations and other regulatory and public information. Printing contracts authorized by this subdivision and for which no state funds are expended are not subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, except for Article 2 (commencing with Section 10295) of Chapter 2.

§211. Advertising Specifications

(a) Material printed pursuant to subdivision (d) of Section 210 that contains advertisements shall meet all specifications prescribed by the department. The printed material shall not contain advertisements for tobacco products, alcohol, firearms and devices prohibited pursuant to Sections 12020, 12220, and 12280 of the Penal Code, or firearms not authorized by the commission as a legal method of sport-hunting, political statements, solicitations for membership in organizations, or any other statement, solicitation, or product advertisement that is in conflict with the purposes for which the material is produced, as determined by the commission. The printing contract shall include criteria to ensure that the public information provided in the publication is easy to reference, read, and understand.

(b) Neither the department nor the commission shall contract with private entities to print the materials described in subdivision (d) of Section 210 if the letting of those contracts will result in the elimination of civil service positions.

§215. Regulations; Filing and Effect

Every regulation of the commission made pursuant to this article shall be filed with the Secretary of State, and shall become effective at the time specified therein, but not sooner than the date of the filing.

§218. Regulations; Review by Court

Any regulation of the commission made pursuant to this article shall be subject to review in accordance with law by any court of competent jurisdiction.

§219. Regulations vs. Code Section

Any regulation adopted pursuant to this article may supersede any section of this code designated by number in the regulation, but shall do so only to the extent specifically provided in the regulation. A regulation which is adopted pursuant to this section shall be valid only to the extent that it makes additions, deletions, or changes to this code under one of the following circumstances:

(a) The regulation is necessary for the protection of fish, wildlife, and other natural resources under the jurisdiction of the commission.

(b) The commission determines that an emergency exists or will exist unless the action is taken. An emergency exists if there is an immediate threat to the public health, safety, and welfare, or to the population or habitat of any species.

A regulation which is adopted pursuant to this section shall be supported by written findings adopted by the commission at the time of the adoption of the regulation setting forth the basis for the regulation. A regulation adopted pursuant to this section shall remain in effect for not more than 12 months from its effective date.

§220. Regulations; Effective Periods

(a) Any regulation of the commission added or amended pursuant to this article shall remain in effect for the period specified therein or until superseded by subsequent regulation of the commission or by statute.

(b) Notwithstanding this article, the commission may add, amend, or repeal regulations at any regular or special meeting if facts are presented to the commission which were not presented at the time the original regulations were adopted and if the commission determines that those regulations added, amended, or repealed are necessary to provide proper utilization, protection, or conservation of fish and wildlife species or subspecies.

B.2.2 California Department of Fish and Game

B.2.2.1 Organization and General Functions

§711. Adequate Funding - Legislative Intent

It is the intent of the Legislature to ensure adequate funding from appropriate sources for the department. To this end, the Legislature finds and declares that:

(a) The costs of nongame fish and wildlife programs and free hunting and fishing license programs shall be provided annually in the Budget Act by appropriating money from the General Fund and sources other than the Fish and Game Preservation Fund to the department for these purposes.

(b) The costs of commercial fishing programs shall be provided out of revenues from commercial fishing taxes, license fees, and other revenues, from reimbursement and federal funds received for commercial fishing programs, and other funds appropriated by the Legislature for this purpose.

(c) The costs of hunting and sportfishing programs shall be provided out of hunting and sportfishing revenues and reimbursements and federal funds received for hunting and sportfishing programs, and other funds appropriated by the Legislature for this purpose. These revenues, reimbursements, and federal funds shall not be used to support commercial fishing programs, free hunting and fishing license programs, or nongame fish and wildlife programs.

(d) The costs of managing lands managed by the department and the costs of wildlife management programs shall be supplemented out of revenues in the Native Species Conservation and Enhancement Account in the Fish and Game Preservation Fund.

(e) The department shall conduct, or contract for, a review, at least every five years, of its programs to ensure consistency with this section.

(f) Hunting, sportfishing, and sport ocean fishing license fees shall be adjusted annually to an amount equal to that computed pursuant to Section 713. However, a substantial increase in the aggregate of hunting and sportfishing programs shall be reflected by appropriate amendments to the sections of this code that establish the base sport license fee levels. The inflationary index provided in Section 713 may not be used to accommodate a substantial increase in the aggregate of hunting and sportfishing programs.

For purposes of this article, "substantial increase" means an increase in excess of 5 percent of the Fish and Game Preservation Fund portion of the department's current year support budget, excluding cost-of living increases provided for salaries, staff benefits, and operating expenses.

§1700. Policy - To Encourage Conservation, Etc. of Living Resources

It is hereby declared to be the policy of the state to encourage the conservation, maintenance, and utilization of the living resources of the ocean and other waters under the jurisdiction and influence of the state for the benefit of all the citizens of the state and to promote the development of local fisheries and distant-water fisheries based in California in harmony with international law respecting fishing and the conservation of the living resources of the oceans and other waters under the jurisdiction and influence of the state. This policy shall include all of the following objectives:

- (a) The maintenance of sufficient populations of all species of aquatic organisms to insure their continued existence.
- (b) The recognition of the importance of the aesthetic, educational, scientific, and nonextractive recreational uses of the living resources of the California Current.
- (c) The maintenance of a sufficient resource to support a reasonable sport use, where a species is the object of sport fishing, taking into consideration the necessity of regulating individual sport fishery bag limits to the quantity that is sufficient to provide a satisfying sport.
- (d) The growth of local commercial fisheries, consistent with aesthetic, educational, scientific, and recreational uses of such living resources, the utilization of unused resources, taking into consideration the necessity of regulating the catch within the limits of maximum sustainable yields, and the development of distant-water and overseas fishery enterprises.
- (e) The management, on a basis of adequate scientific information promptly promulgated for public scrutiny, of the fisheries under the state's jurisdiction, and the participation in the management of other fisheries in which California fishermen are engaged, with the objective of maximizing the sustained harvest.
- (f) The development of commercial aquaculture.

B.2.2.2 Recreational Fishing

§5520. Abalone Management; Legislative Intent

It is the intent of the Legislature that the commission undertake management of abalone in a manner consistent with the abalone recovery and management plan submitted pursuant to Section 5522.

§5521. Moratorium on Taking, Possessing or Landing Abalone; Areas Affected

A moratorium is imposed on the taking, possessing, or landing of abalone (genus *Haliotis*) for commercial or recreational purposes in ocean waters of the state south of a line drawn due west magnetic from the center of the mouth of the San Francisco Bay, including all islands offshore the mainland of California, including, but not limited to, the Farallon Islands and the Southern California Channel Islands. It is unlawful to take, possess, or land abalone for commercial or recreational purposes in those ocean waters while the moratorium is in effect.

§5521.5. Unlawful to Take Abalone for Commercial Purposes; Districts Affected

- (a) In addition to the moratorium imposed by Section 5521, and notwithstanding any other provision of law, it is unlawful to take abalone for commercial purposes in District 6, 7, 16, 17, or 19A, in District 10 north of Point Lobos, or in District 20 between Southeast Rock and the extreme westerly end of Santa Catalina Island.
- (b) There shall be a rebuttable presumption, affecting the burden of producing evidence, that a person who is required to obtain a license pursuant to Section 7145 and who takes or possesses more than 12 individual abalone or takes abalone in excess of the annual bag limit possesses the abalone for commercial purposes.

§5521.6. Registered Aquaculturist May Collect Abalone for Broodstock

Notwithstanding Sections 5521 and 5521.5, a registered aquaculturist may collect abalone for broodstock, in accordance with subdivision (b) of Section 15301.

§5522. Abalone Recovery and Management Plan

(a) On or before January 1, 2003, the department shall submit to the commission a comprehensive abalone recovery and management plan. The plan shall contain all of the following:

(1) An explanation of the scientific knowledge regarding the biology, habitat requirements, and threats to abalone.

(2) A summary of the interim and long-term recovery goals, including a range of alternative interim and long-term conservation and management goals and activities. The department shall report why it prefers the recommended activities.

(3) Alternatives for allocating harvest between sport and commercial divers if the allocation of the abalone harvest is warranted.

(4) An estimate of the time and costs required to meet the interim and long-term recovery goals for the species, including available or anticipated funding sources, and an initial projection of the time and costs associated with meeting the final recovery goals. An implementation schedule shall also be included.

(5) An estimate of the time necessary to meet the interim recovery goals and triggers for review and amendment of strategy.

(6) A description of objective measurable criteria by which to determine whether the goals and objectives of the recovery strategy are being met and procedures for recognition of successful recovery. These criteria and procedures shall include, but not be limited to, the following:

(A) Specified abundance and size frequency distribution criteria for former abalone beds within suitable habitat not dominated by sea otters.

(B) Size frequency distributions exhibiting multiple size classes as necessary to ensure continued recruitment into fishable stock.

(C) The reproductive importance to the entire ecosystem of those areas proposed for reopening to harvest and the potential impact of each reopening on the recovery of abalone population in adjacent areas.

(b) Where appropriate, the recovery and management plan may include the following:

(1) A network of no-take abalone reserves.

(2) A total allowable catch, reflecting the long-term yield each species is capable of sustaining, using the best available science and bearing in mind the ecological importance of the species and the variability of marine ecosystems.

(3) A permanent reduction in harvest.

(c) Funding to prepare the recovery and management plan and any planning and scoping meetings shall be derived from the fees collected for the abalone stamp.

(d) On or before January 1, 2008, and following the adoption of the recovery and management plan by the commission, the department may apply to the commission to reopen sport or commercial fishing in all or any portion of the waters described in Section 5521. If the commission makes a finding that the resource can support additional harvest activities and that these activities are consistent with the abalone recovery plan, all or a portion of the waters described in Section 5521 may be reopened

and management measures prescribed and implemented, as appropriate. The commission may close or, where appropriate, may establish no-take marine refuges in any area opened pursuant to this section if it makes a finding that this action is necessary to comply with the abalone management plan.

(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.

§7100. Applications of Provisions

The provisions of this part apply to the taking and possession of fish for any purpose other than commercial.

§7120. Possession of Bag Limit

It is unlawful for any person to possess more than one daily bag limit of any fish taken under a license issued pursuant to Section 714 or Article 3 (commencing with Section 7145) unless authorized by regulations adopted by the commission pursuant to Section 206.

§7121. Sell or Purchase Fish

Except as otherwise provided by this code or by regulation, it is unlawful to sell or purchase any fish or amphibia taken in, or brought into, the waters of the state, or brought ashore at any point in the state.

It is unlawful to buy, sell, or possess in any place of business where fish are bought, sold, or processed, any fish or amphibia taken on any boat, barge, or vessel which carries sport fishermen, except those fish may be possessed in such a place only for the purposes of canning or smoking under regulations adopted by the commission.

§7145. License Requirements

(a) Except as otherwise provided in this article, every person 16 years of age or older who takes any fish, reptile, or amphibia for any purpose other than profit shall first obtain a license for that purpose and shall have that license on his or her person or in his or her immediate possession or where otherwise specifically required by law or regulation to be kept when engaged in carrying out any activity authorized by the license. In the case of a person diving from a boat, the license may be kept in the boat, or in the case of a person diving from the shore, the license may be kept within 500 yards on the shore.

(b) This section does not apply to an owner of real property, or the owner's invitee, who takes fish for purposes other than profit from a lake or pond that is wholly enclosed by that owner's real property and that is located offshore and not hydrologically connected to any permanent or intermittent waterway of the state.

This subdivision does not, and shall not be construed to, authorize the introduction, migration, stocking, or transfer of aquatic species, prohibited species, or any other nonnative or exotic species into state waters or waterways. This subdivision does not supersede or otherwise affect any provision of law that governs aquaculture, including, but not limited to, the operation of trout farms, the operation of other enterprises for profit, or any activity that is an adjunct to or a feature of, or that is operated in

conjunction with, any other enterprise operated for profit, including private parks or recreation areas.

§7400. Recreational Abalone Advisory Committee; Membership

(a) The director shall appoint a Recreational Abalone Advisory Committee consisting of nine members who shall serve without compensation. The members of the advisory committee shall be selected as follows:

(1) Six members who are not officers or employees of the department. The six members shall be residents of California and meet the following requirements:

(A) Two members shall reside north of the southern boundary line of Marin County and a line extending due east from the easternmost point of Marin County located in San Pablo Bay. The two members shall be selected from nominations submitted by the Northern California Shellfish Assessment Program or by individuals or organizations that actively participate in the recreational abalone fishery, except that not more than one of the members selected shall be an active or former commercial abalone diver or involved in commercial seafood processing or marketing.

(B) Two members shall reside south of the southern boundary line of Marin County and a line extending due east from the easternmost and north of the boundary between Santa Barbara and San Luis Obispo Counties and a line extending due east from the easternmost point in that boundary line. The two members shall be selected from nominations submitted by the Central California Council of Divers, the Southern California Shellfish Assessment Program, the Northern California Shellfish Assessment Program, or by individuals or organizations that actively participate in the recreational abalone fishery, except that not more than one of the members selected shall be an active or former commercial abalone diver or involved in commercial seafood processing or marketing.

(C) Two members shall reside south of the boundary between Santa Barbara and San Luis Obispo Counties and a line extending due east from the easternmost point in that boundary line. The two members shall be selected from nominations submitted by the Greater Los Angeles Council of Divers, the San Diego Council of Divers, the Channel Islands Council of Divers, the Southern California Shellfish Assessment Program, or by individuals or organizations that actively participate in the recreational abalone fishery, except that not more than one of the members selected shall be an active or former commercial abalone diver or involved in commercial seafood processing or marketing.

(2) One member shall represent the department in enforcement activities and shall be selected from personnel in the Wildlife Protection Division.

(3) Two members shall be marine scientists who are or have been involved in abalone research at universities, state universities, or in state or federal programs. Not more than one of the persons shall be an officer or employee of the department.

(b) No member shall be involved in or profit from the culture for sale (commercial aquaculture) of abalone.

(c) The advisory committee shall meet at least once each calendar year to review proposals and recommend to the director projects and budgets for the expenditure of fees received pursuant to Section 7149.8. The committee may review progress reports and the results of projects funded under this article and make recommendations to the director regarding abalone resource management.

§8300. - 8314. *(Repealed by Statutes 1997)*

B.2.2.3 Fines and Penalties

§12009. Abalone-related Violations - Punishment

(a) Notwithstanding Section 12000, and except as provided in Section 12006.6, the punishment for a violation of any provision of Section 5521 or 5521.5, or any regulation adopted pursuant thereto, or of Section 7121 involving abalone, is a fine of not less than fifteen thousand dollars (\$15,000) or more than forty thousand dollars (\$40,000) and imprisonment in the county jail for a period not to exceed one year. The court shall permanently revoke any commercial fishing license, commercial fishing permit, or sport fishing license issued by the department. Any vessel, diving or other fishing gear or apparatus, or vehicle used in the commission of an offense punishable under this section, may be seized and may be ordered forfeited by the court pursuant to subdivision (c) of Section 12157. Notwithstanding any other provision of law, the commercial license of any person arrested for a violation punishable under this section may not be sold, transferred, loaned, or leased, or used as security for any financial transaction until disposition of the charges is final.

(b) Notwithstanding any other provision of law, the money collected from any fine or forfeiture imposed or collected for the taking of abalone for any purpose other than for profit in violation of this article or any other provision of law shall be deposited as follows:

- (1) One-half in the Abalone Restoration and Preservation Account.
- (2) One-half in the county treasury of the county in which the violation occurred.

§12009.1. Abalone - Unlawful Possession - Penalties [Renumbered from 8311]

(a) Notwithstanding Section 12000, and in addition to Section 12009, if any person is convicted of a violation of a regulation permitting the taking of abalone under a sport fishing or sport ocean fishing license issued pursuant to Article 3 (commencing with Section 7145) of Chapter 1 of Part 2, and that person had more than seven times the number of abalone permitted to be possessed under those regulations, that person shall be fined not less than five times the prevailing market value of the abalone.

(b) In addition to the fine, upon a conviction punishable under this section, the court shall order the department to revoke, and the department shall revoke, the person's sport fishing or sport ocean fishing license for one year.

(c) If the court finds that the person convicted of a violation punishable under this section had more than seven times the number of abalone permitted, had more than seven undersized abalone, or had more than seven abalone removed from the shell, or has had his or her fishing privileges revoked pursuant to subdivision (b) for three separate convictions punishable under this section, the court shall order the department to permanently revoke, and the department shall permanently revoke, the person's sport fishing or sport ocean fishing license. A person whose sport fishing privilege is revoked pursuant to this section shall not be eligible for any license or permit, including, but not limited to, a commercial fishing license, to take or possess fish in this state for life.

(d) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date. *(Renumbered and amended by Statutes 1997 Amendment 787)*

B.3 California Code of Regulations, Title 14

B.3.1 Ocean Fishing

§27.00. Definition

The Ocean and San Francisco Bay District consists of the open seas adjacent to the coast and islands or in the waters of those open or enclosed bays contiguous to the ocean, and including San Francisco and San Pablo bays plus all their tidal bays, tidal portions of their rivers and streams, sloughs and estuaries between Golden Gate Bridge and Carquinez Bridge, and the waters of Elkhorn Slough, west of Elkhorn Road between Castroville and Watsonville.

§27.15. Multi-Day Fishing Trips.

The following provisions apply to anglers and to boat owners and operators when a Declaration for a Multi-Day Fishing Trip has been filed with the Department of Fish and Game.

(a) Provisions related to the angler: Up to three daily bag and possession limits of saltwater fin fish, lobster and rock scallops and up to two daily bag and possession limits of abalone are allowed for a person fishing during a multi-day trip in ocean waters from a boat whose owner or operator has filed a Declaration for Multi-Day Fishing Trip, pursuant to the provisions of subsection (b) below.

(1) The provisions of this section do not authorize any person to take more than one daily bag limit of fish during one calendar day.

(2) The provisions of this section do not apply to the taking and possession of salmon, steelhead, striped bass and sturgeon.

(b) Provisions related to the boat owner or operator who has filed for a Declaration for a Multi-Day Fishing Trip:

(1) The owner or operator of a boat shall mail or deliver to the nearest office of the department a Declaration for Multi-Day Fishing Trip application form provided by the department and a \$3.50 filing fee. The applicant shall provide the following information:

(A) Place, date and time of departure of the boat.

(B) Place, date and estimated time of return of the boat.

(C) Name and/or number of the boat, including the number of any Fish and Game registration number plates assigned to the vessel.

(D) Copy of passenger manifest if fishing within 10 miles of the mainland shore of California.

(E) Date and hour Declaration mailed or delivered to the Fish and Game Department office.

(2) The Declaration for Multi-Day Fishing Trip form must be submitted to the nearest office of the department in order for any person aboard such boat to possess more than one bag limit of saltwater fin fish, abalone, lobster and rock scallops. If mailed, the form

must be received at least 48 hours prior to the date of the boat's departure. If the 48-hours advance notice is not met, the original copy of the form signed by an authorized department representative, must be aboard the vessel during the trip. Forms will be accepted for authorization only during business hours of 8:00 a.m. to 5:00 p.m.

(3) A Declaration for Multi-Day Fishing Trip may not be filed for a trip unless the trip is continuous and extends for a period of 12 hours or more on the first and last days of the trip and no berthing or docking is permitted within five miles of the mainland shore.

(4) The owner or operator of a boat filing a Declaration for Multi-Day Fishing Trip shall prepare such form in duplicate, and shall require the duplicate to be posted in full view of the passengers aboard the boat.

(5) All passengers must disembark at place of return stated on Declaration.

B.3.2 Invertebrates

§29.05. General

(a) Except as provided in this article there are no closed seasons, closed hours or minimum size limits for any invertebrate. The bag limit on all invertebrates for which the take is authorized and for which there is not a bag limit otherwise established in this article is 35. In San Francisco and San Pablo bays and saltwater tributaries east of the Golden Gate Bridge invertebrates may not be taken at night except from the shore.

(b) Tidal invertebrates may not be taken in any tidepool or other areas between the high tide mark (defined as Mean Higher High Tide) and 1,000 feet seaward and lateral to the low tide mark (defined as Mean Lower Low Water) except as follows:

(1) In state parks, state beaches, state recreation areas, state underwater parks, state reserves, national parks, national monuments or national seashores: Only abalones, chiones, clams, cockles, rock scallops, native oysters, crabs, lobsters, ghost shrimp and sea urchins may be taken. Worms may be taken except that no worms may be taken in any mussel bed, unless worms are taken incidental to the harvesting of mussels. Mussels may be taken in all areas except in state park system reserves or natural preserves.

(2) In all other areas, except where prohibited within marine life refuges or other special closures: Abalone, limpets, moon snails, turban snails, chiones, clams, cockles, mussels, rock scallops, native oysters, octopuses, squid, crabs, lobsters, shrimp, sand dollars, sea urchins and worms may be taken.

(3) Special Closure. No invertebrates shall be taken on the mainland shore within the boundaries of Año Nuevo State Reserve between the high tide mark and 100 feet beyond the low tide mark between November 30 and April 30. Public access to Año Nuevo State Reserve is subject to change and anglers are advised to contact the Reserve office (650) 879-2025 prior to fishing. No invertebrates may be taken between the high tide mark and 1000 feet beyond the low tide mark along the lee side of Santa Catalina Island between Lion Head Point and Arrow Point.

(c) Measuring Devices. Every person while taking invertebrates which have a size limit shall carry a device which is capable of accurately measuring the size of the species taken.

(d) In all ocean waters skin and SCUBA divers may take invertebrates as provided in this article except that in all ocean waters north of Yankee Point (Monterey Co.),

self-contained underwater breathing apparatus (SCUBA) may be used only to take sea urchins, rock scallops and crabs of the genus *Cancer*. For the purpose of this section, breathing tubes are not underwater artificial breathing devices.

§29.10. General.

(a) Except as otherwise provided in this article, saltwater mollusks, including octopus, may be taken only on hook and line or with the hands.

(b) The size of a mollusk is measured in greatest shell diameter.

§29.15. Abalone.

(a) Geographical Area: Abalone may only be taken north of a line drawn due west magnetic from the center of the mouth of San Francisco Bay. No abalone may be taken, landed, or possessed if landed south of this line.

(b) Open Season and Hours: Abalone may be taken only during the months of April, May, June, August, September, October and November from one-half hour before sunrise to one-half hour after sunset.

(c) Bag Limit and Yearly Trip Limit: Three red abalone, *Haliotis rufescens*, may be taken per day. No more than three abalone may be possessed at any time. No other species of abalone may be taken or possessed. Each person taking abalone shall stop detaching abalone when the limit of three is reached. No person shall take more than 24 abalone during a calendar year.

(d) Minimum Abalone Size: All red abalone must be seven inches or greater measured along the longest shell diameter. All legal size abalone detached must be retained. No undersize abalone may be brought ashore or aboard any boat, placed in any type of receiver, kept on the person, or retained in any person's possession or under his control. Undersize abalone must be replaced immediately to the same surface of the rock from which detached. Abalones brought ashore shall be in such a condition that the size can be determined.

(e) Special Gear Provisions: The use of SCUBA gear or surface-supplied air to take abalone is prohibited. Abalone may not be taken or possessed aboard any boat, vessel, or floating device in the water containing SCUBA or surface-supplied air. Abalone may be taken only by hand or by devices commonly known as abalone irons. Abalone irons must be less than 36 inches long, straight or with a curve having a radius of not less than 18 inches, and must not be less than 3/4 inch wide nor less than 1/16 inch thick. All edges must be rounded and free of sharp edges. Knives, screwdrivers and sharp instruments are prohibited.

(f) Measuring Device: Every person while taking abalone shall carry a fixed caliper measuring gauge capable of accurately measuring seven inches. The measuring device shall have fixed opposing arms of sufficient length to measure the abalone by placing the gauge over the shell.

(g) Abalone Possession and Transportation: Abalones must not be removed from their shell, except when being prepared for immediate consumption.

(h) Abalone Permit Report Card. All persons required to possess a sport fishing license must have a non-transferable Abalone Permit Report Card (FG 2915 (New 12/03) issued by the department while taking abalone. The Abalone Permit Report Card shall be kept with the fishing license while taking or attempting to take abalone. Persons

diving from a boat shall keep the license and Abalone Permit Report Card in the boat. The Abalone Permit Report Card shall be completed as required immediately upon returning and boarding the boat with abalone. Persons diving from the shore shall keep the license and Abalone Permit Report Card within 500 yards of the shore. Persons shall, immediately upon bringing ashore an abalone, make a hole and completely remove the punched section from the report card in one of the designated locations for each abalone taken, and record with indelible ink, the date, time, and location code in the spaces provided adjacent to the hole. For the purposes of this section a boat is defined as any watercraft used or capable of being used as a means of transportation on water (reference Section 9840(a), Vehicle Code and Section 6552(q), Title 14, California Code of Regulations). An Abalone Permit Report Card shall be valid during the open season for taking abalone in the calendar year for which it was issued. No person may be issued or possess more than one Abalone Permit Report Card or any Abalone Permit Report Card other than their own. The Abalone Permit Report Card must be returned to the Department of Fish and Game at 19160 South Harbor Drive, Fort Bragg, California, 95437-5798.

(i) Upon purchase of the Abalone Permit Report Card, the card number shall be entered by the license agent in ink on the back of the angler's sport fishing license. The sport fishing license number shall be entered by the license agent on the Abalone Permit Report Card on the appropriate line.

B.3.3 Commercial Fish

§100. Abalone.

Abalone may not be taken for commercial purposes.