

## Chapter 4. Legal Framework

### 4.1 Authority and Responsibility

#### 4.1.1 California Department of Fish and Game

The Department's primary authority and responsibility is as a trustee of fish and wildlife resources (FGC §711.7). The Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (FGC §1802). The Department provides expert advice to the Fish and Game Commission, monitors the status of populations, and conducts research. The Department administers and enforces the provisions of the FGC through regulations adopted by the Department or the Commission (FGC §702). The Director and the Commission have the authority to take emergency regulatory action (FGC §7710 and FGC §240, respectively).

#### 4.1.2 Fish and Game Commission

The Commission is responsible for the formulation of general policies of the Department, and functions as a regulatory power. The Commission makes decisions concerning seasons, bag limits, and methods of take for game animals, sport fisheries, and some commercial fisheries. With respect to abalone, the Legislature delegates full management authority to the Commission in a manner consistent with the ARMP (FGC §5520). Prior to adopting regulations, the Commission receives public input in writing and at public hearings, in accordance with the Administrative Procedures Act.

### 4.2 California State Law

#### 4.2.1 Legislation Mandating the ARMP

Fish and Game Code §5522 mandates the development and implementation of the ARMP, and describes the general framework for this process:

**FGC §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.

Other FGC sections pertaining to abalone are found in Appendix B. A table listing the location in this document of all FGC §5522 requirements is found in Appendix C.

#### **4.2.2 California Environmental Quality Act (CEQA)**

This act requires state agencies with regulatory programs that have the potential to impact the environment to address these potential impacts in an environmental document. Examples include the regulatory programs of the Commission and the Department. The existing regulations for the northern California recreational abalone fishery address CEQA requirements through the environmental document for the recreational fishing regulations. The ARMP, however, does not contain proposed regulatory changes nor does it consider the authorization of actions to be undertaken in the environment. The ARMP functions as an advisory document, making recommendations for possible future actions in the environment. For this reason, the ARMP is not subject to CEQA (Public Resources Code §21102, CEQA Guidelines §15262). The authorization of future actions that are based on ARMP recommendations will be subject to CEQA.

#### **4.2.3 Marine Life Management Act (MLMA)**

The MLMA was signed into law and incorporated into the FGC (§7050 to §7090) in January, 1999. The act created state policies, goals, and objectives to govern the conservation, sustainable use and restoration of California's living marine resources. Although many of these have been incorporated into the ARMP, the ARMP is mandated by legislation that preceded the MLMA, and has different goals and objectives from the MLMA. Unlike traditional fishery management plans (FMPs), the ARMP does not include regulations and is therefore not subject to the MLMA provisions governing the preparation of FMPs.

#### **4.2.4 Marine Life Protection Act (MLPA)**

The MLPA (FGC §2850 through §2863) was added by statutes in 1999. Its purpose is to develop a network of areas designed to protect the State's marine life, habitats, and ecosystems. The Master Plan for this system will include recommendations for the types of habitat and an identification of species that should be included in these protected areas. Marine Protected Areas as they pertain to abalone recovery and management in this plan are discussed in Section 6.4.2.4.

### **4.3 Federal Law**

Federal laws that relate to abalone resources in California include the Marine Mammal Protection Act (MMPA) and the ESA. For the species in California that fall under these Federal laws, management responsibility lies with the federal government. The Department provides consultation to the federal agency that manages these federally-protected species. The sea otter, an important abalone predator, is protected under both Acts, and managed by the U.S. Fish and Wildlife Service. The white abalone is listed as endangered under the ESA, and its recovery is being managed by NOAA Fisheries.

#### **4.4 Process of Plan Review and Amendment**

The ARMP is designed to be flexible and adaptable to a wide range of future conditions, and is intended to function without the need for frequent amendment. However, unforeseen social, economic, environmental, or biological developments may create a situation under which the ARMP does not adequately provide effective management and recovery of abalone stock. Under such circumstances the Commission would amend the ARMP.

An amendment to the ARMP would be required for major changes or controversial actions outside the scope of the ARMP. Examples include changes to management or recovery goals and objectives, or changes to the species addressed by the ARMP.

The process for preparation and adoption of an amended ARMP would be similar to the development and adoption process for the original ARMP, including input from advisory committees, an extended period for public hearings and comment, and peer review. Once a draft plan amendment is completed and submitted to the Commission, it will undergo a public review process.

##### **4.4.1 Changes Based on New Biological Data**

This plan is expected to be adaptive. The Commission, at its discretion, may change specific limits and density targets for decision criteria when new data become available. To make such changes the Commission would conduct at least one public hearing with appropriate notice prior to adoption by majority vote. These changes would not require full amendment of the plan itself.