

**TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations**

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 210, 220, 240, 5521, and 7149.8, of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 220, 5521, 7145, and 7149.8, of said Code, proposes to amend Section 29.15, Title 14, California Code of Regulations, relating to abalone.

Informative Digest/Policy Statement Overview

Under existing regulations (Section 29.15, Title 14, CCR), red abalone may only be taken for recreational purposes north of a line drawn due west magnetic from the center of the mouth of San Francisco Bay. Current regulations also specify: season, hours, daily limits, special gear provisions, measuring devices, abalone report card requirements, and sizes.

The regulation change is being proposed in response to the guidelines in the Abalone Recovery and Management Plan (ARMP), adopted by the Commission in 2005, with regard to average abalone density at eight index sites (surveyed on a three year cycle) within Mendocino and Sonoma counties. Recent scuba surveys indicate that the average density of emergent abalone (sublegal and legal sized) has trended downward over the past six years. Average density is now at 0.54 abalone/m² for the index sites which is substantially below the 0.68/m² average from the previous three years. Abalone creel surveys based on interviews with fishermen have recently shown indications of declining abalone populations. Wardens have also observed fishermen experiencing increased difficulty in catching limits of abalone. Low average densities and declining trends indicate a risk that leaving regulations unchanged could result in further reductions in average density, to values below the ARMP trigger level of 0.50 abalone/m², a density level that requires a 25 percent reduction in the total allowable catch (TAC) for the fishery. Abalone fishing effort, as well as catch, in the Fort Ross area is much higher than other sites and abalone densities there are approaching levels which would trigger closure for the site. Consequently, the Department is proposing regulations which will reduce the catch in the hopes that further reductions in average density and the closure of Fort Ross can be prevented.

The regulatory change will amend the existing regulations by either reducing fishing hours, reducing the annual limit, and/or reducing the season in the Fort Ross area, depending on which option(s) is chosen. The proposed regulation would also require every person using a container to store abalone prior to tagging to possess his own container and to retain abalone only in his own container. The following summarizes the options for regulatory change in Title 14, Section 29.15.

Option 1:

- Change the legal fishing hours to begin at 8:00 AM instead of one-half hour before sunrise.

Option 2:

- Reduce the annual limit from 24 abalone per year to no less than 12 abalone per year.

Option 3:

- Reduce the season at Fort Ross area by closing the months of April and May.

Option 4:

- Require every person who uses a container to store abalone, prior to tagging, to possess his own container and to retain abalone only in his own container.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Red Lion Hotel, 1830 Hilltop Drive, Redding, California, on Thursday, September 15, 2011 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Beach Resort Monterey, 2600 Sand Dunes Drive, Monterey, California, on Thursday, October 20, 2011 at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before October 14, 2011 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on October 17, 2011. All comments must be received no later than October 20, 2011 at the hearing in Monterey, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Sherrie Fonbuena at the preceding address or phone number. **Marija Vojkovich, Regional Manager, Marine Region, Department of Fish and Game, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts is difficult to assess because available socio-economic and fishing effort data were not designed to address this question,

and therefore assumptions must be made in the analyses that are not amenable to quantitative estimation of statistical uncertainty. In particular, changes in expenditures and fishing effort by abalone fishermen in response to new regulations could be expected to differ depending upon several factors such as distance traveled to fishing grounds and the avidity of the individual fishermen, but these kinds of variables can not be stratified from the available data sets. Consequently, estimates of economic impacts are unavoidably imprecise and possibly biased, and alternative conclusions could be reached under a different set of underlying assumptions. Notwithstanding these limitations, the potential for significant statewide adverse economic impacts that might result from the proposed regulatory actions has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action(s) will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, since these activities focus on resources and features unique to the North Coast.

Option 1: Early morning closure

Economic impact: The estimated economic impact for the early morning closure is predicted to fall below the Option 2 economic impact estimate because the economic analysis was based on a predicted reduction in the number of abalone trips. The early morning closure is not expected to reduce the number of trips to the same extent that an annual limit reduction would, because a significant number of shorepickers will be able to adapt to the closure by concentrating effort in the open low tide periods or behaving more like divers, who are not as dependent on early morning low tides to take their abalone.

Option 2: Reduce the annual limit.

Economic impacts: If the Commission elects to reduce the annual limit of abalone from 24 to 12 per year, annual trips and trip expenditures by abalone sport fishermen could decrease, perhaps by as much as 37 percent. This scenario assumes a shortened season for the individual abalone fishermen since their reduced annual limits would be filled sooner. This assumption is based on historic monthly harvest rates and trip activities, which under a reduced annual limit could cause the seven months abalone season to effectively shrink to two-and-a-half months for many fishermen. A 37 percent reduction in activities and trip expenditures could translate into \$4.8 million (2009\$) in potential direct revenue losses to businesses. In the area affected by these potential direct revenue losses, the economic impact could be about \$8.5 million (2009\$) in total economic output losses (due to the ripple effect). Since expenditures per trip tend to be higher for people making fewer trips and those people are less affected by a reduced annual limit, these impacts should be considered worst case scenarios.

Option 3: Fort Ross Early Season Closure

Economic impacts: A minor adverse economic impact far below the range of the overall

economic impact analysis is anticipated for the regulation change altering the season opening at Fort Ross to June 1. Most abalone fishermen may shift to other areas to the north in response to this option.

Option 4: Individual Container Possession Requirement

Economic impacts: No adverse economic impact is anticipated based on this proposed option.

- (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:

If the Commission elects to enact an early morning closure, job loss projections are likely to be minimal. Alternatively, if the Commission elects to reduce the annual limit from 24 to 12 abalone, the equivalent of up to 82 jobs may be lost. These job loss projections are all relative to employment levels associated with recreational abalone harvest and business activities calculated from annual averages using data from 2005 through 2009. Trips to Fort Ross are largely day trips and a reduction in such trips is not likely to generate significant economic losses under the Fort Ross early season closure.

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

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

There are no increased costs or new fees, nor new reporting requirements for private persons or businesses in the proposed regulations.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

Unknown, though some potential loss in recreational abalone report card sales revenue could likely occur.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: August 23, 2011

Sonke Mastrup
Executive Director