

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

1. Jim Martin, [Vice-President, Sonoma County Abalone Network (SCAN)] in oral comment at the April 17, 2013, Commission Meeting

- a. SCAN has the following concerns with the fishery: declines in density at the Sonoma Index sites, lowered catch in this area as well, low or no recruitment and finally a naturally occurring die-off. He cites that license sales have declined about 15 percent in the last three years and as a result catch has been reduced, especially in Sonoma County.
- b. Supports Fort Ross site closure with great trepidation, but would like the ARMP to be revised so that Fort Ross is not unnecessarily kept closed.
- c. Supports early morning closure (Option 1) but would like to add a 7:00 AM start time option along with the 8:00 AM option presented at the meeting. After attending the Department's constituent meetings, SCAN is in agreement with enforcement staff that the fishery needs a set start time.
- d. Opposes reducing the annual limit (Option 4).
- e. Supports reducing the limit south of the Sonoma/Mendocino County line (Option 5) to 6, 9 or 12 abalone.
- f. Proposes to extend the Stewart's Point State Marine Conservation Area (SMCA) to re-open Fisk Mill Cove and Horseshoe Cove sites and believes that if effort shift is not accounted for more of the Department's index sites will decline.
- g. Would like to sponsor discussions with divers, scientists, wardens, local businesses and dive clubs to amend the ARMP towards a more long-term solution. Would like time on a future agenda to present these findings.

Response

- a. The Department shares SCAN's concerns regarding declining abalone densities and decreased catch rates along the Sonoma coast. Despite the apparent reduction in overall abalone card sales in the last three years, the Commission believes that additional catch reduction south of Mendocino County is warranted. The number of abalone caught per year is influenced by many factors, and it is not a factor in reducing the TAC. Without changes in fishing regulations, the catch can increase freely in the next year. Previous catch does not restrict the fishery in the next year.
- b. The Commission adopted the Fort Ross site closure. The current abalone population at this site cannot sustain a fishery. But, the Commission did not revise the criteria for reopening a closed site. Criteria for reopening a closed site are prescribed in the ARMP. The Department is committed to revising the ARMP during the next two to six years, and if new criteria for reopening a closed site are incorporated, then the reopening of Fort Ross will be evaluated against those criteria.

- c. The ISOR included Option 1 with sub-options for a start time between 7:00 - 8:00 AM; the Commission adopted an 8:00 AM start time to aid enforcement and to reduce intertidal fishing pressure. Proposed start times prior to 8:00 AM were rejected because the 8:00 AM start time, in combination with the other regulations adopted, provides the required 25% reduction in the fishery and is supported by the majority of abalone fishermen.
- d. The Commission adopted Option 4 to reduce the annual limit from 24 abalone to 18 abalone. Proposed annual limits above and below 18 were rejected because the annual limit of 18, in combination with the other regulations adopted, provides the required 25% reduction in the fishery with the least adverse economic impacts.
- e. The Commission adopted Option 5 to reduce the annual limit south of the Sonoma/Mendocino county line to 9 abalone. Proposed annual limits above and below 9 for the area south of the Sonoma/Mendocino county line were rejected because the Sonoma/Marin annual limit of 9 provides additional protection to the fishery area showing the greatest decline in abalone densities due to the 2011 red tide die-off event and is supported by the majority of abalone fishermen.
- f. This comment is outside the scope of the proposed regulation. Designation and boundaries of MPAs are contained within Section 632, Title 14, CCR. Subsection 632 (b)(11) Stewarts Point State Marine Conservation Area (SMCA) where the recreational take of abalone is permitted is clustered within the Stewarts Point State Marine Reserve (SMR) where the take of all living marine resources is prohibited [subsection 632(b)(12)]. The proponents advocate reopening the area that was closed by the SMR during the implementation of the Marine Life Protection Act (MLPA) process in the North Central Coast Region. The ongoing MLPA process provides the opportunity for review and adaptive changes of existing MPAs based upon ongoing monitoring and evaluation, and consequently it is not appropriate to consider such changes under regulations for routine fishery management. A network of Marine Protected Areas (MPAs) was established in North Central Coast in 2010 to help improve overall health of the marine ecosystem and the species upon which it is built. The Stewarts Point SMR is one of the few stakeholder-developed “preferred size” MPAs (18-36 square miles) and was specifically designed to protect large continuous stretches of habitat. It is a backbone MPA. For slow-growing species such as abalone, the influence of the MPAs in the region will take many years to be realized. Abalone grow to a minimum legal size of 7 inches in approximately 12 years. The Department and the Commission support the underlying principles of the MLPA and see value in allowing the MPAs time to recover from past fishing pressure so that the monitoring program can reflect a more naturally functioning ecosystem. This adjustment time would also provide the opportunity for the protected abalone to enhance the regional productivity of the stocks.
- g. This comment is outside the scope of the proposed regulation. Public participation in the work of the Department and Commission is always

welcome; presentations to the Commission should be arranged through the Executive Director's office.

2. Tom Bieri in oral comment at the April 17, 2013, Commission Meeting

- a. Supports Fort Ross site closure since this site was affected by red tide event.
- b. Supports early morning closure (Option 1) at 8:00 AM.
- c. Opposes reducing the annual limit (Option 4).
- d. Supports reducing the limit south of the Sonoma/Mendocino County line (Option 5) to 12 abalone.
- e. Wants to protect the resource for his daughters. Believes the index sites that are described as sentinel sites are not representative and refers to these areas as "overdove coves." He observes many abalone north of Salt Point at Sonoma County sites that are not surveyed by the Department.

Response

- a. The Commission adopted the Fort Ross site closure.
- b. The Commission adopted an 8:00 AM start time.
- c. See Response 1.d.
- d. See Response 1.e.
- e. Index sites are established in the ARMP, therefore, this comment is outside the scope of the proposed regulation. The Department does survey areas north of Salt Point (e.g. Sea Ranch and Stewarts Point) but these are not used to determine if fishing is having a negative impact on abalone density. We expect to see early signs of fishing-related problems at the popular fishing sites before the low use areas. One purpose of using the index sites is to detect potential problems before extensive damage is done.

3. Josh Russo, [President, Waterman's Alliance] in oral and written comment at the April 17, 2013, Commission Meeting

- a. Remarks that his group is working with SCAN to present options that are supported by and representative of divers.
- b. Supports early morning closure (Option 1).
- c. Supports reducing the annual limit south of the Sonoma/Mendocino County line (Option 5).

Response

- a. See Response 1.g.
- b. The Commission adopted an 8:00 AM start time.
- c. See Response 1.e.

4. Ed Schulze, [Member, Recreational Abalone Advisory Group (RAAC)] in oral comment at the April 17, 2013, Commission Meeting

- a. Emphasizes the importance of RAAC's gathering information on the fishery through input from the Department's biologists and enforcement as well as the creel, transect survey and the abalone report card catch data.
- b. Suggests increasing the cost of the abalone report card to \$30 in order to make up the lost revenue from declining card sales.
- c. Suggests that he would also like to enforce the return of the cards since this data informs the catch estimate and currently has a 20-25 percent compliance rate among fishery participants.

Response

- a. This comment is outside the scope of the proposed regulation. The Department acknowledges the contributions of the RAAC.
- b. This comment is outside the scope of the proposed regulations. The speaker proposes increasing the Abalone Report Card fees to \$30. Recent legislation has delegated the authority of levying abalone report card fees to the Fish and Game Commission. In principle the Department supports this proposal as the current fees collected from the abalone report card do not cover the expenses incurred for abalone management and enforcement. However the Department recommends revisiting the fee structure as part of the ARMP review and revision process which is scheduled to begin after this regulatory change process. This way suggested fees can be aligned with the cost of whatever new management approach is adopted under the revised ARMP.
- c. This comment is outside the scope of the proposed regulations. Report card reporting requirements are set in subsection 1.74(c)(7), Title 14, CCR.

5. Paul Weakland in oral comment at the April 17, 2013, Commission Meeting

- a. Challenges the Department's survey methods stating that they do not count abalone less than 4 inches, do not use flashlights and do not flip rocks or look in caves to count abalone.
- b. Suggest that the Department not make any changes to the fishery at this time and proposes other options:
 1. Stop more poaching so as not to punish the fishers since he cites only one in ten poachers are caught.
 2. Raise the size limit to 7 ¾ inches citing that this would increase reproductive output three fold.
 3. Reopen the closed abalone fishing areas south of San Francisco to accommodate effort shifts.

- c. He also cited that the ARMP does not include the effects of Marine Protected Areas (MPAs) in its management strategy and believes that these areas should prevent future fishery closures.

Response

- a. Survey methods are not established via regulation. The Department's surveys count emergent abalone; abalone less than 4 inches are counted and measured.
- b. See Responses 1b. - 1.e. The following is a response to the proposed options:
 - 1. Law Enforcement efforts to combat abalone poaching are considered a high priority for the Department and much time and resources is focused on enforcing the abalone regulations. Abalone poaching is a constant problem, regardless of the amount of effort the Department expends in trying to curb it. Thus the Department must continue its enforcement efforts while also actively managing the legal recreational fishery. All of this is done to try to maintain a healthy abalone stock to continue the fishery.
 - 2. Minimum Abalone Size is set forth in subsection 29.15(d) and not a part of this regulatory package. This alternative was evaluated and rejected in the ISOR. While increasing the size limit may allow a longer period of reproduction, it will likely increase mortality related to injuries sustained during removal and subsequent replacement of undersized animals between the present size limit and the proposed larger size limit. In addition, natural mortality would reduce the number of larger animals available to the fishery, compared to 7-inch animals. Thus, the overall fishery yield could decrease, with little or no biological benefit to the stock.
 - 3. Opening fishing in the moratorium area is outside the scope of this regulatory package. The speaker recommends opening up areas south of San Francisco (San Francisco, San Mateo, Santa Cruz, and Monterey counties and areas south) which are currently subject to an abalone fishing moratorium under section 5521 of the Fish and Game Code (FGC). Under section 5522 (d) of the FGC the Commission has the authority to reopen all or portions of the moratorium area if they find that the abalone resource can support harvest activities. The Department does not have current information on the status of the abalone population in the area immediately south of San Francisco Bay. Consequently, the Commission has no current information to base a decision to resume harvest activities, and acquisition of such information will not happen within the time frame of this regulatory change process.
- c. MPAs are anticipated in the ARMP but are part of the Marine Life Protection Act (MLPA) process. Although MPAs and fisheries management are complementary, they are not equivalent. The purpose of the proposed regulation is to advance the primary fishery management goal of sustainability. Moreover, that which is being managed is a specific fishery-which may be based on geographical,

scientific, technical, recreational and economic characteristics-and so may only provide limited protection of a particular habitat. Conversely, although the MLPA considers fishery habitat, it also encompasses broader, ecosystem-based objectives that are not limited to only fishery management, e.g., improving "recreational, educational and study opportunities provided by marine ecosystems" and protecting "marine natural heritage...for their intrinsic value". The MLPA also states that one of the purposes of the marine reserve component is to generate baseline data that allows the quantification of the efficacy of fishery management practices outside the reserve.

6. Bill Lemos, [Member, Mendocino Abalone Watch (MAW)] in oral comment at the April 17, 2013, Commission Meeting

- a. Observes 300 fishers in one day at Glass Beach in Mendocino County during an early morning spring tide and this can account for about 900 abalone being fished. Intertidal area is being affected by rockpickers, divers and poachers. Sees more abalone in deeper waters, greater than 40 feet. Also, observes many empty shells that he believes are caused by fishers fatally injuring abalone.
- b. Supports any option the Commission chooses that would reduce take by 25 percent.

Response

- a. The observation of the amount of effort and estimated take at one particular location is an example of the high fishing effort that is occurring throughout the entire fishery. The ARMP management triggers were developed to address such fishery impacts to the abalone stock and thus the reason why the Department initiated this process to change regulations in the fishery. The observed mortality of abalone due to picking injuries is predominantly seen in the intertidal where rock picking activities occur. The adoption of the early morning closure may significantly reduce rockpicking activities and thus may reduce the observed picking mortalities of abalone.
- b. See Responses 1.b. - 1.e.

7. Jack Likins in oral and written comment at the April 17, 2013, Commission Meeting

- a. Submitted a letter, DVD and a petition signed by 400 people that supports his point of view to the Commission.
- b. Criticizes the Department's eight index sites as not being realistic.
- c. He believes under the current ARMP, the entire fishery will close in a few years. By closing Fort Ross, the next northern sites will start to decline since fishing pressure will be shifted there. This in turn will cause the average of the eight index sites to fall below the management trigger for closure of the entire fishery.

- d. Claims that if monitored, Humboldt and Del Norte counties would be closed to fishing since densities are naturally lower here in the upper geographic range for red abalone.
- e. Wants to revise the ARMP and would like it to adopt a regional management approach and is looking towards individually managing sites to their own particular requirements and using volunteer divers trained by the Department who could monitor these sites but have these sites audited by the Department.

Response

- a. Submissions acknowledged.
- b. Designation of index sites is outside the scope of the proposed regulation. The eight index sites are used as an early indicator to examine the impact of fishing pressure on abalone density. The sites were chosen based on fishing pressure and the catch from these sites makes up approximately 48% of the fisheries catch. These sites would be impacted before the rest of the fishery, so management can respond if needed to change fishing pressure.
- c. The Commission adopted the Fort Ross site closure. The current abalone population at this site cannot sustain a fishery. The effects of effort shift from the closure of this site were calculated into the overall reduction by averaging the catch data from the three most recent years at Fort Ross and subtracting that from the TAC.
- d. Survey methods are not established via regulation; therefore this comment is outside the scope of the proposed regulation. The vast majority of the abalone fishery occurs in Sonoma and Mendocino counties (approximately 97% of the fishery catch) so baseline and index site surveys are focused in this region because the fishery occurs there.
- e. This comment is outside the scope of the proposed regulation. The Department is committed to revising the ARMP during the next two to six years to implement the ARMP long term plan which includes an area or regional management approach.

8. Jonathan Centoni in oral comment at the April 17, 2013, Commission Meeting

- a. Criticizes the Department's survey methods since he believes there are not enough sites and they are similar to one another so are not representative of the entire fishery. He would like to revise the ARMP to include more survey sites and does not want any changes to the fishery to occur at this time.
- b. He believes the Fort Ross closure under the current management plan may lead to an unnecessary closure of the entire fishery.

Response

- a. See Response 7.b. and 7.d.
- b. See Response 7.c.

9. Al Gerhardt in oral comment at the April 17, 2013, Commission Meeting

- a. Supports the Fort Ross site closure but believes it will have an effect on other locations.
- b. Opposes the early morning closure (Option 1) at 8:00 AM since he believes this will force him out of the fishery as a rockpicker.
- c. Opposes reduction in daily bag limit (Option 2).
- d. Supports reduction in annual limit (Option 4) from 24 to between 16 and 18 abalone.

Response

- a. See Response 7.c.
- b. See Response 1.c.
- c. The Commission did not reduce the daily limit.
- d. See Response 1.d.

10. Rick Copeland in oral comment at the April 17, 2013, Commission Meeting

- a. States that he thought ARMP was temporary and questions how the 6,600 abalone per hectare baseline density was calculated.
- b. He also states that abalone take has dropped in Sonoma County while take has risen in Mendocino County as a result of fishers migrating north.
- c. He proposes expanding Stewart's Point SMCA.
- d. He wants to revise the ARMP to change the index sites and incorporate the 60 individual sites to manage the fishery.

Response

- a. Revisions to the ARMP are outside the scope of the proposed regulation. The ARMP includes both an interim management plan, which the fishery is currently managed under, and a long term management plan which needs to be further developed and will be implemented in the future. The Department is committed to revising the ARMP to fully develop the long term plan in the next two to six years. The baseline density was calculated from the average density of three surveys completed from 1999-2000 at Van Damme, Salt Point and Fort Ross (see ARMP Table 7-1).
- b. Comment noted. The take in Sonoma County has also been impacted by the red tide in Aug. 2011 which killed many red abalone and other marine invertebrates.
- c. See Response 1f.
- d. Designation of index sites is outside the scope of the proposed regulation. The Department notes that there are roughly 50 sites that are

tracked in the fishery by the abalone report card which records site, catch and time of day.

11. Karen Garrison, [Pacific Coast Director, Ocean's Program, Natural Resources Defense Council] in oral comment at the April 17, 2013, Commission Meeting

- a. Supports any combination of measures so that 25 percent reduction in catch is achieved.
- b. Suggests that fishers be required to watch a training video to learn the proper methods of removing abalone in order to prevent under-sized abalone from being fatally wounded.
- c. States that the ARMP is well-designed in that density data feeds back in to management decisions.

Response

- a. See Responses 1.b. - 1.e.
- b. This comment is outside the scope of the proposed regulation. The speaker recommends requiring abalone fishers to watch an abalone harvest training video in order to reduce incidental fishing mortality due to bar cuts.
Improper abalone collecting techniques may result in incidental mortality of sublegal animals due to bar cuts (abalone iron cuts). Abalone blood has no clotting mechanism and the animal will die due to loss of blood (hemophilia) as a result of moderate to severe cuts to the foot. Proper collecting techniques will minimize damage to the abalone and reduce mortality of sublegal individuals. It is important that fishers measure the abalone prior to taking them from the rock to insure that they are targeting legal-sized individuals. This is particularly important in the intertidal where the abalone are difficult to remove and are much more likely to be damaged. If the abalone is too small, the animal should be replaced to the same location and held in place until it re-attaches. The Department encourages abalone fishers to learn proper techniques for abalone take. A training brochure and other information regarding abalone fishing in California are available online at <http://www.dfg.ca.gov/marine/abalone.asp>. The brochure is also distributed at popular abalone fishing locations during creel interviews in the spring. The recommendation for additional training outlets, including an online video tutorial, has merit, however, the Department does not have the ability to require fishermen to show proof of this training prior to obtaining an abalone report card at this time.
- c. Comment noted. Also, see Response 10.a.

12. Samantha Murray, [Director, Pacific Program, Ocean Conservancy] in oral comment at the April 17, 2013, Commission Meeting

- a. Supports Fort Ross site closure and states that from previous Commission meetings where abalone data has been presented, the

density at Fort Ross has been continually declining and that in the last survey in 2009 the density at 0.33 abalone per square meter (m^2) was hovering close to the 0.25 abalone/ m^2 site closure.

- b. Supports future zonal management for the fishery where high-use areas have lower bag limits.
- c. Opposes the opening of MPAs citing that they have only been closed less than three years and that the ARMP did contemplate the use of MPAs.

Response

- a. The Commission adopted the Fort Ross site closure.
- b. See Response 7.e.
- c. See Response 5.c.

13. Steve Rebeck in oral comment at the April 17, 2013, Commission Meeting

- a. He states that he was an abalone consultant for the Southern Sea Otter Recovery Team and that abalone densities in sea otter areas, which can be found in the Department's publications, are between 70-1,000 abalone/hectare. He also states that the decline in California commercial landings of abalone can be attributed to the introduction of sea otters to the Central Coast.
- b. He also has observed high abalone densities in offshore sites at Point Arena Lighthouse and Saunder's Reef.

Response

- a. While abalone exist with sea otters their densities are low and there is not the abalone population surplus to support a fishery in sea otter regions.
- b. Comment noted. Also see Response 2.e.

14. Curtis Degler in email received by Commission May 13, 2013

- a. Supports Fort Ross site closure until recovery from abalone mass mortality caused by the red tide is evident.
- b. Opposes reduction in daily bag limit (Option 2) because this would result in less abalone cards and fishing licenses being purchased and believes that the subsequent loss of revenue to the Department and Enforcement Division would result in increased poaching.
- c. Opposes seasonal reduction (Option 3).

Response

- a. The Commission adopted the Fort Ross site closure. The Department will monitor density at Fort Ross (triennially) and recruitment events (annually) in northern California in order to evaluate the future

sustainability of the fishery at this site The Department also anticipates revising the ARMP during the next 2-6 years to transition to the long term, area-based, management plan. Re-opening Fort Ross will likely be considered under the revised ARMP, as well as based on evidence of recovery at the site.

- b. The Commission did not reduce the daily limit.
- c. The Commission did not adopt Option 3 to reduce the fishing season. Reducing the fishing season could have resulted in greater adverse economic impacts than the regulations adopted by the Commission.

15. Larry Ankuda in email received by Commission May 13, 2013 and letter received by Commission May 23, 2013

- a. Supports the early morning closure (Option 1) at 8:00 AM.
- b. Opposes a reduction in the daily bag limit (Option 2) because this would increase the financial burden for fishers who travel long distances who will need to make more trips to take the same number of abalone under the current bag limit. He already pays about \$40 in fuel costs to travel 2.5 hours one way to a safe abalone dive spot.
- c. Supports reducing the season (Option 3) by closing the month of April as many deaths among abalone fishers occur during this month. Noted that in the last ten years, ten abalone fishing related deaths have occurred in April and that this current year four deaths occurred at the end of April.
- d. Supports reducing the annual limit (Option 4) to 21 or 18.
- e. Believes that adopting the options he supports, which additively are projected to reduce the take in the fishery between 42 percent and 47 percent would be more than sufficient to achieve 25 percent reduction goal and not require the option he opposes.

Response

- a. The Commission adopted an 8:00 AM start time.
- b. The Commission did not reduce the daily bag limit.
- c. The Commission did not adopt a reduction of the fishing season. The adopted regulations provide the required 25% reduction in the fishery with the least adverse economic impacts. A reduction of the fishing season could have greater economic impact to local businesses dependent on the abalone fishery and consequently it was not adopted. Diver safety is a concern to the Department and closing months during the early part of the season could possibly reduce dive related deaths in the fishery as a side benefit to reducing the fishing effort. However, diver safety remains primarily at the discretion of each individual that chooses to go out and fish for abalone on any given day. The Department urges abalone fishers to follow standard free diving safety protocols and to take caution in determining whether to go or not go fishing on any particular day during the season.
- d. See Response 1.d.

- e. The Department notes that the fishing reduction alternatives are not necessarily directly additive as the commenter suggests. See Responses 1.b. - 1.e.

16. Kathleen Bylsma in email received by Commission May 13, 2013

- a. Opposes a reduction in the daily bag limit (Option 2) and believes that taking two abalone per day is not worth the cost and effort of taking her family on camping trips when she goes abalone diving and also not enough to feed her family.

Response

- a. The Commission did not reduce the daily bag limit.

17. Bruce Durnbaugh in email received by Commission May 14, 2013

- a. Opposes reduction in daily bag limit (Option 2) from three to two abalone and believes this option would not provide enough meat for his family for two meals a day and would discourage other fishers that travel long distances of +500 miles, like him, to participate in the sport. Also, he believes this will lead to significant economic impacts to the local economy and that entire economic impact of this regulation cannot be fully realized.

Response

- a. The Commission did not reduce the daily bag limit.

18. Chuck Ballinger in email received by Commission May 16, 2013

- a. Opposes early morning closure (Option 1) because he believes safe diving conditions often occur in the early morning and forcing divers to enter water later in the morning may increase the incidence of dive accidents.
- b. Opposes a reduction in the daily bag limit (Option 2) and believes this option would result in a "locals only" sport since abalone fishers who drive longer distances already struggle with high fuel prices and may no longer participate in the fishery if they can only take two abalone per day. He wants to keep the abalone fishery accessible to all California residents. He also believes that this option would increase poaching among those who travel longer distances who may bring non-divers and dry-sack their limit for them.
- c. Supports reducing the season (Option 3) by closing the month of November.
- d. Supports a reduction in the annual limit (Option 4) to 18.

Response

- a. The Commission adopted an 8:00 AM start time. See Response 15c.
- b. The Commission did not reduce the daily bag limit.
- c. See Response 14.c.
- d. See Response 1.d.

19. Arlene Rudy, [Secretary, Marin Scuba Club] in email received by Commission May 16, 2013

Submitted the same comments as Chuck Ballinger (18).

Response

See Responses 18.a. - 18.d.

20. Garry Sebring in email received by Commission May 16, 2013

- a. Opposes early morning closure (Option 1) because he believes this option would increase the incidence of accidents.
- b. Opposes a reduction in the daily bag limit (Option 2) and believes this option would kill the sport.

Response

- a. The Commission adopted an 8:00 AM start time. See Response 1.c.
- b. The Commission did not reduce the daily bag limit.

21. Charles Notthoff, [President, Humboldt Skindivers Dive Club] in letter received by Commission May 16, 2013

- a. Supports Fort Ross site closure.
- b. Supports early morning closure (Option1) of 8:00 AM.
- c. Opposes a reduction in the daily bag limit (Option 2).
- d. Supports reducing the season (Option 3) by closing the month of April if additional reductions are needed.
- e. Supports reduction in the annual limit (Option 4) to 21 or 18 abalone if additional reductions are needed.
- f. Undecided about targeting the catch reduction in Sonoma and Marin counties (Option 5).

Response

- a. The Commission adopted the Fort Ross site closure.
- b. The Commission adopted an 8:00 AM start time.
- c. The Commission did not reduce the daily bag limit.
- d. See Response 14.c.
- e. See Response 1.d.
- f. See Response 1e.

22. Harold Hoogasian in oral comment at the May 22, 2013, Commission Meeting

- a. Supports Fort Ross site closure.
- b. Supports early morning closure (Option1) of 8:00 AM.
- c. Opposes a reduction in daily bag limit (Option 2) believes this will make the trip to get abalone more burdensome on abalone fishers who travel long distances.
- d. Supports reducing the season (Option 3) by closing both the months of April and November and no more than two months.
- e. Would like to have a discussion to reopen San Mateo County and to have a special tag fee for this area to fund enforcement. Also, recommended having cameras mounted to survey the coast as another method to catch poachers.

Response

- a. The Commission adopted the Fort Ross site closure.
- b. The Commission adopted an 8:00 AM start time.
- c. The Commission did not reduce the daily bag limit.
- d. See Response 14.c.
- e. See Response 5.b.1. - 5.b.3.

23. Reginald Elgin, [Cultural Advisor, Dry Creek Rancheria of Pomo Indians] in oral comment at the May 22, 2013, Commission Meeting

- a. Opposes Fort Ross site closure unless the Commission grants an exemption for the Pomo Indian tribe to access the site for at least one week or more while adhering to all other abalone regulations.

Response

- a. The Commission adopted the Fort Ross site closure. However, an exemption for Native American cultural uses is outside the scope of this regulatory package. The Commission did include a motion as part of the adoption of regulations to direct Department staff to enter into consultation with affected Native American tribes as part of the ARMP amendment process. So the scheduled revision of the ARMP in the next two to six years will include Native American input and concerns in amending the ARMP.

24. Milo Vukovich, [President, Sonoma County Abalone Network (SCAN)] in oral and written comment at the May 22, 2013, Commission Meeting

- a. Supports Fort Ross site closure since this site already has lowered densities before the recent die-off from the harmful algal bloom. Supports with caveat that there is a sunset on the regulation after two years, which should be enough time for a proper management plan to be adopted.

- b. Supports early morning closure (Option 1) at 8:00 AM and believes this would help enforcement with their before dawn poaching cases and would prevent the damage inflicted by rockpickers on abalone who go out during the early morning tides. He states that these fishers damage the foot muscle of sub-legal abalone while pulling them off of rocks and returning them causing these abalone to bleed out and die. Supports this option with the caveat that there is a sunset on the regulation after two years.
- c. Opposes reducing the daily bag limit (Option 2).
- d. Opposes reducing the season (Option 3).
- e. Opposes reducing the annual limit (Option 4).
- f. Supports reducing annual limit in Sonoma County area south (Option 5) because he believes this area should have less fishing pressure, but opposes reducing the annual limit in Mendocino County where there are no problems in abalone density. Supports this option with the caveat that there is a sunset on the regulation after two years.
- g. He reports that sales of abalone cards in 2012 has declined 20 percent from the ten year average from 2002-2011 and that sales have declined after 2009.

Response

- a. The Commission adopted the Fort Ross site closure; however, it did not adopt a sunset provision. The Department will monitor density at Fort Ross (triennially) and recruitment events (annually) in northern California in order to evaluate the future sustainability of the fishery at this site The Department also anticipates revising the ARMP during the next 2-6 years to transition to the long term, area-based, management plan. Re-opening Fort Ross will likely be considered under the revised ARMP, as well as based on evidence of recovery at the site.
- b. The Commission adopted an 8:00 AM start time. The requested sunset provision is outside the scope of the proposed regulations. However, the Commission may revise the start time through the standard rulemaking process at some date in the future if it determines that such a change is necessary.
- c. The Commission did not reduce the daily bag limit..
- d. The Commission did not adopt Option 3.
- e. See Response 1.d.
- f. See Response 1.e.
- g. Comment noted.

25. Paul Weakland in oral comment at the May 22, 2013, Commission Meeting

- a. Believes regulation changes are punishing honest guys while poachers have no limits to the amount of abalone they take, also wants to revise ARMP. Feels that MPAs were supposed to relieve future regulation changes such as season reductions and feels there is no need to change abalone catch. Finally, would like the Department to revisit

opening the sport abalone fishery in San Francisco and San Mateo counties as this would alleviate any effort shift.

Response

- a. See Response 5.b.1. - 5.b.3.

26. Volker Hoehne [Member, Waterman's Alliance] in oral comment at the May 22, 2013, Commission Meeting

- a. This group is in alignment with SCAN on all these proposed regulation options.
- b. Supports Fort Ross site closure.
- c. Supports early morning closure (Option 1) at 8:00 AM and believes that there will be no realized pressure shift since there are a good weather conditions for taking abalone before this time.
- d. Supports splitting limits along the Sonoma/Mendocino County line (Option 5).

Response

- a. See Response 24a-g
- b. The Commission adopted the Fort Ross site closure.
- c. The Commission adopted an 8:00 AM start time.
- d. See Response 1.e.

27. Greg Helms, [Program Manager, Ocean Conservancy] in oral comment at the May 22, 2013, Commission Meeting

- a. Supports early morning closure (Option 1) at 8:00 AM combined with county based sub-regional limits (Option 5), but would like to know how the different options interrelate and which provide the greatest confidence in the conservation goal, and will also allow for the greatest flexibility for the fishery participants.
- b. Supports fisheries management that is backed by science. He states that the ARMP is not quite a fishery management plan, but is a working system that has goals and objectives for the performance of the fishery. The fishery utilizes metrics and indicators that are informed by a monitoring system, which may be imperfect, but are used to achieve these goals and this makes up the fundamental piece to any fisheries management plan.

Response

- a. See Responses 1.c. and 1.e. The Department recognizes that options based on reductions in daily and yearly bag limit reductions are most robust to changes in fishing behavior while options such as reductions in fishing hours and seasons are most susceptible to changes in fishing

behavior, resulting in lower confidence in their projected impact to total catch.

- b. Comment noted. The ARMP was not developed under the Marine Life Management Act (MLMA), which came shortly after. However the ARMP was developed using the guiding principles of MLMA and fishery management plans in general. Thus it is operating in a similar fashion as fishery management plans that were developed under MLMA.

28. David Whittington in letter received by Commission May 23, 2013

- a. Supports the early morning closure (Option 1) at 8:00 AM.
- b. Opposes a reduction in the daily bag limit (Option 2) believes this option would punish law-abiding sportsmen if other options that he supports are also adopted.
- c. Supports reducing the season (Option 3) by closing the month of April.
- d. Supports only sub-options 21 and 18, the 3 to 8 percent reduction he refers to in his email to reduce the annual limit (Option 4).
- e. Believes that adopting the options he supports, which when added together are projected to reduce the take in the fishery between 42 percent and 47 percent would be more than sufficient to achieve 25 percent reduction goal and not require the option he opposes.

Response

- a. The Commission adopted an 8:00 AM start time.
- b. The Commission did not reduce the daily bag limit.
- c. See Response 14.c.
- d. See Response 1.d.
- e. See Response 15.e.

29. Jerry Mahoney in letter received by Commission May 23, 2013

Submitted the same comments as David Whittington (28).

Response

See Responses 28.a. - 28.e.

30. Carl Tuttle in letter received by the Commission May 23, 2013

- a. Supports Fort Ross Closure
- b. Supports early morning closure (Option 1) at 8:00 AM
- c. Strongly opposes a reduction in the daily bag limit (Option 2)
- d. Supports reducing the season (Option 3) by closing the month of April
- e. Strongly opposes reducing the annual limit (Option 4).
- f. Supports targeted catch reduction in Sonoma and Marin Counties (Option 5)

Response

- a. The Commission adopted the Fort Ross site closure.
- b. The Commission adopted an 8:00 AM start time.
- c. The Commission did not reduce the daily bag limit.
- d. See Response 14.c.
- e. See Response 1.d.
- f. See Response 1.e.

31. David Bruce in letter received by Commission May 28, 2013

- a. Supports Fort Ross Site Closure.
- b. Supports early morning closure (Option1).
- c. Opposes a reduction in the daily bag limit (Option 2) and believes this option would hurt the economy if abalone divers no longer participate in the fishery due to increasing costs to maximize abalone take.
- d. Supports reduction in annual limit (Option 4) and believes this option should be the driving factor for reducing the overall take.
- e. Supports reducing the open season (Option 3)

Response

- a. The Commission adopted the Fort Ross site closure.
- b. The Commission adopted an 8:00 AM start time.
- c. The Commission did not reduce the daily bag limit.
- d. See Response 1.d.
- e. See Response 14.c.

32. Yen Tran in email received by Commission June 5, 2013

- a. Supports banning the harvesting of abalone for the next ten years to ensure the population of abalone have sufficient time to recover from over-harvesting since they have slow growth-rates. He states that increases in abalone harvest have increased tenfold citing that in the last year 728,000 abalone were caught in the fishery. He also states that declines in abalone density in Sonoma County will further hinder reproduction rates there and that surveys have shown in the last three years no significant reproduction have occurred and finally adds that many abalone fisheries have collapsed worldwide and does not want this to happen in California.
- b. This ban would also prevent the loss of lives of abalone fishers who engage in a dangerous sport. He states that because fewer abalone are reported nearshore fishers have to swim further out and be exposed to greater risk. He also states that fishers do not know how to properly re-attach abalone and may expose them to predators as well as injuring them fatally. He believes that at the very least abalone fishers should be required to have the proper training and prove they are in good health in order to participate in this recreational sport.

Response

- a. Department estimates for abalone catch for the last 5 years from 2008 to 2012 averaged about 234,000 abalone, while in 2012 catch was estimated to be about 206,000. The Department recognizes that red abalone are slow growing animals taking on average 12 years to grow to the minimum legal size of 7 inches in northern California and that this requires extra vigilance in abalone management. The comment regarding the banning of abalone harvest is outside the scope of the proposed regulation.
- b. The comment that abalone fishers be required to have proper training and prove they are in good health is outside the scope of the proposed regulation. See Response 15.c.

33. Scott Brichan in email received by Commission June 6, 2013

- a. Opposes any change to abalone regulations. He is from southern California and goes on weekend trips to fish for abalone.

Response

- a. The ARMP prescribes a reduction in the catch by 25 percent when the overall average density in the fishery has dropped below the threshold of 0.50 abalone per meter square (m²). In addition, abalone density at the Fort Ross site is below the threshold level of 0.25 abalone/m² at which the ARMP calls for site closure. Changes in the current abalone regulations are necessary to comply with the ARMP. The Commission at the June 26, 2013 meeting adopted regulations to instigate an early morning closure (fishing begins at 8:00 AM), reducing the annual limit to 18, and reducing the annual limit south of the Sonoma/Mendocino County line to 9. See Responses 1.b. - 1.e. The Commission adopted closure of the Fort Ross site. The current abalone population at this site cannot sustain existing levels of fishery take.

34. Max Doner in email received by Commission June 6, 2013

- a. Opposes reduction in daily bag limit (Option 2) because the limit of two abalone per day would not make his abalone dive trip worth the long drive.
- b. Supports a reduction in annual limit (Option 4) to 18.
- c. Believes that the Commission did not want to hear from the abalone diving community regarding this issue since the scheduled discussion hearing on the proposed abalone regulations was held in southern California and not more locally where abalone divers reside.

Response

- a. The Commission did not reduce the daily bag limit.
- b. See Response 1.d.

- c. The location for Commission meetings is decided at the beginning of the year and these meetings are held throughout the State. The initial notice hearing occurred in Santa Rosa while the adoption hearing was held in Sacramento. Oral comments at these hearings and the discussion hearing as well as written comments submitted to the Commission were heard and read by the Commission. In addition, several meetings were held prior to notice publication (refer to ISOR section III.(e). Though over 50 percent of abalone report card holders reside in northern California counties, abalone fishermen come from throughout California (and from outside California) to participate in the fishery.

35. Jeffrey T Miller in email received by Commission June 8, 2013

- a. Opposes reduction in daily bag limit (Option 2).
- b. Opposes a reduction in the annual limit (Option 4).

Response

- a. The Commission did not reduce the daily bag limit.
- b. See Response 1.d.

36. Ted Migdal in email received by Commission June 11, 2013

- a. Opposes reduction in daily bag limit (Option 2) to two abalone per day, but is supportive of this option if the possession limit increased to four abalone. He proposes that it would benefit the local economy if the possession limit increased to two daily bag limits for abalone, a total of six abalone in possession under current regulations or four under Option 2. This change would increase the amount of money he would likely spend during his abalone fishing visits to Mendocino County since he would probably stay an additional night or two.
- b. Supports a reduction in the annual limit (Option 4) to eight abalone per year if this will maintain sustainable harvesting.

Response

- a. The Commission did not reduce the daily bag limit. Changes to the possession limit are outside the scope of the proposed regulations. Since the success rate of getting the daily limit is high in the fishery, an increase in the possession limit could effectively increase the take.
- b. See Response 1.d.

37. Lino Veiga in email received by Commission June 12, 2013

- a. Opposes reduction in the daily bag limit (Option 2) since he travels about 7-11 hours to harvest abalone and believes some fishers make three trips or less per year. He supports the current limit or an increase to four abalone per day.

- b. Supports reduction in the annual limit (Option 4) to 12 abalone per year if that is what will help the fishery and believes this to be enough for him and his family to eat. He also states that 24 abalone is more than is needed by most fishers.

Response

- a. The Commission did not modify the daily bag limit. The recommendation to increase the daily bag limit is outside the scope of the proposed regulation. Increases to the daily bag limit were not considered because they would increase the fishery take, the opposite of the intended regulation changes. Since the success rate of getting the daily limit is high in the fishery, an increase of one abalone to the bag limit could effectively increase the take by 25%.
- b. See Response 1.d. The average number of abalone taken by abalone fishermen is 9 per year.

38. Rod Jones, [Coordinator, Mendocino Abalone Watch] in fax received by Commission June 14, 2013

- a. Supports the early morning closure (Option 1) at 8:00 AM and would like an end of day closure at 6pm. The group believes this would further standardize hours of take and provide better light conditions for wardens. The group realizes supporting this option targets more of the rockpicker population, but believes this to be justified by alleviating the impacts of so many fishers removing their daily bag limit and also damaging undersize abalone during low tide events. They cite that about 2,000 fishers visit Glass Beach, a high use site, over a 3-day minus tide period and remove +6,000 abalone.
- b. Supports reducing the daily bag limit reduction (Option 2) to two abalone per day. In the group's interactions with fishers at Van Damme State Park, there are many that have told them that one or two abalone is enough for their needs. Also, supports changing possession limit from three to six abalone.
- c. Supports reducing the season (Option 3) by closing both the months of April and November since the group believes these are bad weather months.
- d. Supports reducing the annual limit (Option 4) to 12 abalone.
- e. Supports reducing the annual limit in Sonoma County area south (Option 5).
- f. Supports Closing Fort Ross
- g. Recommends specifying "Only red Abalone (*Haliotis rufescens*)" in the first sentence of subsection 29.15(a).
- h. Recommends removing "landed or possessed if landed" in the second sentence of subsection 29.15(a).
- i. Recommends changing "taken" to "detached" in subsection 29.15(c).
- j. Recommends removing "No other species of abalone may be taken or possessed." from subsection 29.15 (c) and adding "of any kind" in the second sentence of subsection 29.15(a) for clarity.

- k. Recommends adding “All legal-size abalone that are detached must be retained” in subsection 29.15(c) in order to reduce injury and mortality of abalone and to prohibit “high grading”.
- l. Proposes minor changes to subsection 29.15(c) to clarify language and meaning
- m. Proposes removing “All red abalone must be” from the first sentence of subsection 29.15(d) to avoid any implication that other variety of abalone may be taken
- n. Proposes changes to wording that addresses the requirement to replace undersize abalone.
- o. Proposes to add text to subsection 29.15(d) to define and prohibit “high grading”.
- p. Proposes combining subsections 29.15(e), (f), and (g) and rewording them for clarity.
- q. Proposes adding a requirement that abalone irons must be employed in such a manner as not to fatally injure the abalone during removal, by using the rock surface as a fulcrum for leverage.
- r. Proposes changes to subsection 29.15(h) regarding possession of an abalone report card, stating that the current subsection is unnecessarily wordy.
- s. Proposer states that his previous submissions of these proposed changes have not been acknowledged.

Response

- a. The Commission adopted an 8:00 AM start time. Changes to the fishing end time are outside the scope of the proposed regulations. The proposed 6 p.m. end time may allow the take of abalone during darkness in the later months of the season, which is contrary to the proposer’s recommendation to ensure sufficient natural light conditions for enforcement purposes. Also see Response 6.a.
- b. The Commission did not reduce the daily bag limit. See Response 36.a.
- c. See Response 14.c.
- d. See Response 1.d.
- e. See Response 1.e.
- f. The Commission adopted the Fort Ross site closure.
- g. Subsection 29.15(c) addresses the species of abalone that may be taken. Red abalone (*Haliotis rufescens*) is already listed. Clarification is not needed.
- h. This text is necessary for enforcement purposes.
- i. This more restrictive requirement is not necessary or enforceable.
- j. The current organization is clear.
- k. This requirement is listed in subsection 29.15(d). Repetition is not necessary.
- l. The current regulation is clear.
- m. The existing law is clear
- n. The proposal inadvertently removes the requirement to replace undersized abalone. The current regulation is clear.

- o. Subsection 29.15(d) already states that all legal size abalone detached must be retained. The proposed additions are not necessary.
- p. The current regulations are clear.
- q. The proposed change is not enforceable.
- r. The current subsection is both enforceable and clear.
- s. The proposer submitted similar, if not identical, proposals in OAL rulemaking file #2011-1219-08s. The proposals were evaluated and responses to the proposals were included as an attachment to the ISOR in that rulemaking package.

39. Jack Likins comments in an email dated June 14, 2013

- a. Opposes the Department's recommendation put forth on June 10, 2013 to close Fort Ross, adopt the early morning closure (Option 1) at 7:00 AM and reduce the annual limit (Option 4) to 12 abalone per year.
- b. Expressed concerns that management under the current ARMP will result in closure of the fishery in a few years.

Response

- a. The Department revised its recommendation at the June 26, 2013 Commission meeting to an early morning closure at 8:00 AM, reducing the annual limit to 18, and reducing the annual limit south of the Sonoma/Mendocino County line to 9. The Commission adopted these options along with the Fort Ross site closure. See Responses 1.b. - 1.e.
- b. See Response 7.c.

40. Bob Sloan, in emails dated June 15 and 17, 2013

- a. Does not support the reduction of the annual limit to 12 abalone
- b. Suggests implementing special tags with higher fees available only for residents of Mendocino and Sonoma counties with proceeds going directly to abalone management and enforcement in northern California.

Response

- a. See Response 1.d.
- b. Creation of a second abalone report card with geographically limited tags was considered (Alternative 3) in the ISOR and rejected, primarily due to increased regulatory complexity and cost to the Department. Limiting tag sales to residents of Mendocino and Sonoma counties only would be discriminatory.

41. Steve Rebeck in an email dated June 15, 2013

- a. DFW index sites are in the wrong place (i.e. heavily fished sites)
- b. The term "recovery" in the Abalone Recovery and Management Plan is a misnomer. Red abalone are not threatened or endangered.

- c. The 6,600 abalone per hectare baseline (in ARMP) does not relate to densities considered healthy in the sea otter range which average 70 to 1000 per hectare. Why are recreational and/or commercial divers being held to a higher standard than animals?
- d. Fake density claims are being used at San Miguel Island to keep an abalone fishery from opening. Sportsmen have supported this through claims that a commercial fishery would increase poaching on the north coast although it is clear that north coast poaching numbers are 50% higher (300,000 pounds) than the entire commercial fishery pre-1997 (200,000).
- e. Poaching of abalone on the north coast is common with reported "families" in vans containing 5-10 people, mostly kids (who do not require a fishing license) that take red abalone worth up to \$100.
- f. Bar cut and undersize injury waste was estimated to be in the range of 100% of legal harvest in the early 1970s (See: Burge, Odemar, Schultz, report(s) to the FGC 1973).
- g. MPAs must be accounted for. Just closing off areas to human use, as some of us have seen in San Luis Obispo County, does not solve problems

Response

- a. See Response 8.b.
- b. Comment noted.
- c. The Department's goal, as stated in the MLMA, is to maintain sustainable fisheries. Thus, to sustain the northern California red abalone recreational fishery at its current size, the Department manages the abalone population at the current level even though it is much larger than in the past when sea otters were present. Also, see Response 13.a.
- d. Comment addresses the commercial abalone fishery, not the recreational abalone fishery, and therefore is outside the scope of the regulatory package
- e. The Department recognizes that abalone poaching continues to occur in various forms along the north coast during the abalone season. Also see Response 5.b.1.
- f. The Department acknowledges the high mortality rate from these injuries.
- g. See Response 5.c.

42. James Cameron in email dated June 16, 2013

- a. In reference to the Department's recommendation put forth on June 10, 2013 to close Fort Ross, adopt the early morning closure (Option 1) at 7:00 AM and reduce the annual limit to 12 abalone and 6 in Sonoma County south, he questions why the die-off in Sonoma County should affect take in Mendocino. He asks further why the Department didn't recommend annual limits of 18 in Mendocino County and 6 south of the Sonoma/Mendocino County line to meet the requirement.

Response

- a. The proposed regulations are not solely to address the impacts of the die-off in Sonoma County. The goal of the proposed annual limit reduction is to address management guidelines prescribed in the interim ARMP which call for a 25 percent reduction in the overall fishery if the average density of abalone measured at eight index sites falls below 0.5 abalone/m². The Sonoma County die-off event contributed to reaching the ARMP management threshold, thus is the reason for additional protections for Sonoma and Marin Counties as a sub-limit to the annual limit reduction. Shifts in effort from Sonoma County to Mendocino County as a result of the declines in density and away from Fort Ross are expected and reductions to the fishery TAC take this into account (including Mendocino).

43. Rod Jones [Coordinator, Mendocino Abalone Watch] comments in an email dated June 16, 2013

- a. Suggests implementing a requirement for new divers to take an on-line course prior to receiving their abalone card and tags

Response

- a. See Response 11.b.

44. Jack Likins in email and letter received by Commission June 17, 2013

- a. Opposes the Department's recommendation put forth on June 10, 2013 to close Fort Ross, adopt the early morning closure (Option 1) at 7:00 AM and reduce the annual limit (Option 4) to 12 abalone per year because he feels this is an extreme overall estimated catch reduction of 39 percent.
- b. He cites that report card data show legal take has declined by 51 percent in Sonoma County and 27 percent in all of the north coast counties from 2009 to 2011 and believes this decrease is in part due to declining densities at the Department's index survey sites as well as less fisher participation overall. He also believes these reductions in catch and density are brought on by a list of contributing factors including the harmful algal bloom, poaching, "by-kill" or incidental mortality caused by returning injured abalone and lastly that the index sites are high-use fishing areas since they have easy public access and are located nearby to metropolitan areas.
- c. He would like the ARMP revision to include some form of regional management.

Response

- a. See Response 39.a.
- b. See Response 7.b.

c. See Response 7.e.

45. Bill Lemos, [Member, Mendocino Abalone Watch] in email received by Commission June 18, 2013

- a. Supports the Department's recommendation put forth on June 10, 2013 to close Fort Ross, adopt the early morning closure (Option 1) at 7:00 AM and reduce the annual limit (Option 4) to 12 abalone per year because he believes that without a reduction in take the future abalone population will be severely compromised by current take and poor recruitment
- b. He has been a resident of the Mendocino coast since 1949 and has witnessed the declining abalone population in the nearshore, intertidal area. In an area he has been diving for dozens of years he observed how difficult it was to recently find a legal-sized abalone and he attributes this to the increased fishing pressure in recent years and that divers are targeting abalone further and further south from the access point at this location. He also observes hordes of fishers during the low tides.
- c. On his underwater excursions either free-diving or on SCUBA he sees abalone in deeper water and not very many abalone in shallow and has not seen juvenile abalone, which are needed to replace the fished population. He also has seen many empty shells that he believes are caused by fishers injuring abalone during removal.

Response

- a. The Commission did not adopt the Department's June 10, 2013 recommendation. The initial Department recommendation was considered by the Commission to be too restrictive to the fishery and more economically adverse to the local coastal economy. The Commission adopted the Department's June 26 recommendation that fulfilled the required 25% reduction in the fishery with the least adverse economic impacts.
- b. Comments noted
- c. Comments noted

46. Steve Mutto in email received by Commission June 19, 2013

- a. Supports the Fort Ross site closure with the caveat that a 2-6 year sunset is also adopted and believes that the current criteria for reopening Fort Ross is outdated and unrealistic and should be amended.
- b. Supports the early morning closure (Option 1) at 8:00 AM (5 percent-24 percent reduction) and believes this would, on the conservative side, total a 25 percent reduction or more.
- c. Supports reducing the season (Option 3) by closing both the months of October and November (12 percent reduction).
- d. Opposes the Department's recommendation put forth on June 10, 2013 to adopt the early morning closure (Option 1) at 7:00 AM and to reduce

the annual limit (Option 4) to 12 abalone per year and believes this sub-option penalizes fishers and the local economy. He would like other smaller options to be utilized instead of this drastic option.

- e. Supports reducing the annual limit (Option 4) only the sub-option of 18 abalone (8 percent reduction).
- f. Supports reducing the annual limit in Sonoma County area south (Option 5) and only sub-option of 9 abalone from this area. He questions why Marin County is also grouped in this sub-option since he believes there is no shortage of abalone there.

Response

- a. The Commission adopted the Fort Ross site closure; however, no sunset provision was specified. See Responses 1.b. and 24.a. The comment about the outdated criteria for reopening a site was noted.
- b. The Commission adopted an 8:00 AM start time.
- c. See Response 14.c.
- d. See Response 39.a.
- e. See Response 1.d.
- f. See Response 1.e. As stated in the ISOR, Marin County is included with Sonoma County to simplify enforcement by creating a contiguous zone in which the reduced catch would be in effect. Catch in Marin Co. makes up less than 2% of the fishery.

47. Joe Ambrosino in email dated June 17, 2013

- a. Opposes the Department's recommendation put forth on June 10, 2013 of reducing the limit south of the Sonoma/Mendocino County line to 6 abalone (Option 5).
- b. Supports reducing the annual limit to 18 abalone (Option 4).
- c. Proposes to reopen the no-take MPAs to sport-harvesting of abalone to alleviate the fishing pressure from other reduced abalone population sites.

Response

- a. See Response 39.a.
- b. The Commission adopted an annual limit of 18 abalone.
- c. See Response 5.c.

48. Jack Shaw in email received by the Commission June 21, 2013

- a. Opposes reduction in the daily bag limit (Option 2)
- b. Current management of the entire fishery as a whole treats all users the same regardless of whether they are "avid" or "occasional" fishers without regard to where they might fish. Is this an accurate assumption or should different use patterns be considered in managing the fishery? Need to move away from one-size-fits-all management and more towards region based management.

- c. Consider the potential effects of abalone overpopulation. In many species over population can have drastic consequences? If this is the case then trying to manage the abalone stock at high densities could be counterproductive for the species.

Response

- a. The Commission did not reduce the daily bag limit.
- b. See Response 7.e.
- c. Since abalone are broadcast spawners, higher densities can improve reproductive success. Overpopulation is not currently a concern on this part of the coast.

49. Joshua Russo [President, Waterman's Alliance] in email received by Commission June 24, 2013

- a. Supports the early morning closure (Option 1).
- b. Opposes reducing the daily bag limit (Option 2).
- c. Opposes the Department's recommendation put forth on June 10, 2013 of reducing the annual limit to 12 abalone (Option 4), and states that this is an example that the ARMP needs to be revised.
- d. Supports reducing the annual limit south of the Sonoma/Mendocino County line (Option 5).

Response

- a. The Commission adopted an 8:00 AM start time.
- b. The Commission did not reduce the daily bag limit.
- c. See Responses 10.a. and 39.a.
- d. See Response 1.e.

50. Samantha Murray, [Director, Pacific Program, Ocean Conservancy] and on behalf of Karen Garrison [NRDC] in email received by Commission June 24, 2013

- a. Supports the Department's recommendation put forth on June 10, 2013 to close Fort Ross, adopt the early morning closure (Option 1) at 7:00 AM, reduce the annual limit (Option 4) to 12 abalone per year and to reduce the limit south of the Sonoma/Mendocino County line (Option 5) to 6 abalone.
- b. Opposes reducing the daily bag limit (Option 2) and believes this option may incentivize poaching.
- c. Opposes the opening of North Central MPAs stating that declines in abalone density predated their implementation in May 2010.
- d. States the necessity to revisit the management measures in the ARMP based on future monitoring data and any changes resulting from the peer review of the ARMP currently overseen by the Ocean Science Trust (OST).

Response

- a. See Response 45.a.
- b. The Commission did not reduce the daily bag limit.
- c. This comment is outside the scope of the proposed regulation.
- d. The Department agrees with the commenter and revisiting the management measures will be part of the overall ARMP amendment process. This process has been initiated with the OST lead technical review of the ARMP methods for assessing density for use in management.

51. Volker Hoehne [Vice President, San Diego Freedivers] in email received by Commission June 24, 2013

- a. Supports the early morning closure (Option 1).
- b. Opposes reducing the daily bag limit (Option 2).
- c. Opposes the Department's recommendation put forth on June 10, 2013 of reducing the annual limit to 12 abalone (Option 4).
- d. Supports reducing the annual limit south of the Sonoma/Mendocino County line (Option 5).

Response

- a. The Commission adopted an 8:00 AM start time.
- b. The Commission did not reduce the daily bag limit.
- c. See Response 39.a.
- d. See Response 1.e.

52. Greg Fonts [Triton X dba Freedive Shop] in email received by Commission June 25, 2013

Submitted the same comments as Volker Hoehne's June 24, 2013 (51).

Response

See Responses 51.a. - 51.d.

53. Jeff Benedict, [Treasurer, Long Beach Neptune's] in email received June 25, 2013

Submitted the same comments as Volker Hoehne's June 24, 2013 (51).

Response

See Responses 51.a. – 51.d.

54. Chuck Dale in email received by the Commission June 25, 2013

- a. Recognizes that the ARMP guidance on reducing take by 25% based on index site data. However, his opinion is the red abalone fishery outside of the Reef Camp/Fort Ross area appears to be far healthier now than it was in the 1970's when he started free diving at these sites.
- b. Supports the early morning closure (Option 1) to start at 8:00 AM.
- c. Suggests implementing an evening closure to start at 4:00 PM.
- d. Supports closure of the Fort Ross area until 2016.
- e. Supports reducing the annual limit in Sonoma County to six abalone per year until 2016.
- f. Supports reducing the annual limit in Marin County to six abalone per year until 2016.
- g.

Response

- a. Comment noted.
- b. The Commission adopted an 8:00 AM start time.
- c. See Response 38.a.
- d. See Response 24.a.
- e. See Response 1.d. and 1.e.
- f. Separate annual limits for Marin County are outside the scope of the proposed regulation. See Response 46.f.

55. Bill Bernard, [Representative, California Coalition of Diving Advocates] in email received by Commission June 25, 2013

- a. Supports the Fort Ross site closure.
- b. Supports the early morning closure (Option 1) at 8:00 AM.
- c. Supports reducing the daily bag limit (Option 2).
- d. Supports reducing the fishing season from 7 to fewer months per year (Option 3).
- e. Opposes reducing the annual limit (Option 4) and reducing the annual limit in Sonoma County south.

Response

- a. The Commission adopted the Fort Ross site closure.
- b. The Commission adopted an 8:00 AM start time.
- c. The Commission did not reduce the daily bag limit.
- d. See Response 14.c.
- e. See Response 1.d. and 1.e.

56. Glen Sharp in in email received by Commission June 25, 2013

- a. States that the Department's recommendations put forth on June 10, 2013 would achieve a reduction in abalone catch greater than the 25 percent requirement of the ARMP.
- b. Supports the early morning closure (Option 1) at 8:00 AM, a reduction of 23 percent and supports reducing the annual limit south of the

Sonoma/Mendocino County line (Option 5) to 9 abalone, a reduction of 30 percent in Sonoma and Marin counties. Believes that these two measures achieve the desired reduction of 25 percent.

Response

- a. The Department's June 10, 2013 recommendation would achieve an overall estimated reduction in the fishery of 29 percent. The estimated percent reductions for each of the five regulatory options as presented in the ISOR, are approximate and not necessarily additive. Each estimate is based on previous data and may not reflect future catch due to shifts in effort, specifically, the early morning closure (Option 1), and the reduced fishing season (Option 3) which are prone to changes in fishermen behavior. The Department's recommendation of combining the reduced annual limit to 12 abalone (Option 4) with the 7:00 AM early morning closure (Option 1) was a precautionary measure to achieve a reduction of at least 25 percent. Also see Response 39.a.
- b. The Commission adopted 8:00 AM and reduced the annual limit south of the Sonoma/Mendocino County line to 9.

57. Harvey Hopkins, [Chairman, Dry Creek Rancheria of Pomo Indians] in oral comment at the June 26, 2013, Commission Meeting

- a. Supports having regulations that manage the abalone fishery and is in favor of the Fort Ross site closure if necessary.
- b. Requests an exemption in the future for Native American take of abalone for cultural purposes in areas that are subject to fishery closure such as Fort Ross, and that tribal rights for cultural uses be considered in future regulations changes.

Response

- a. The Commission adopted the Fort Ross site closure.
- b. The Commission did include a motion as part of the adoption of regulations to direct Department staff to enter into consultation with affected Native American tribes as part of the ARMP amendment process. The scheduled revision of the ARMP in the next two to six years will include Native American input and concerns in amending the ARMP.

58. Reginald Elgin, [Cultural Advisor, Dry Creek Rancheria of Pomo Indians] in oral comment at the June 26, 2013, Commission Meeting

- a. Requests that Native American representatives be included in any process for changing regulations to the abalone fishery.

Response

- a. See Response 57.b.

59. Josh Russo, [President, Waterman's Alliance] in oral and written comment at the June 26, 2013, Commission Meeting

- a. States that the Department's original recommendation put forth on June 10, 2013 to reduce the annual limit to 12 is an example that the ARMP needs to be revised. Also, states that the population of abalone is healthy, and although there are declines in Sonoma County, it is already an unnatural population due to the absence of otters and rise of the urchin fishery.
- b. Supports the early morning closure (Option 1) at 8:00 AM to help Enforcement Division.
- c. Opposes a reduction in the daily bag limit (Option 2).
- d. Opposes a reduction in the annual limit (Option 4).
- e. Supports a reduction in the annual limit south of the Sonoma/Mendocino County line (Option 5) stating that this would aid in controlling effort shift.

Response

- a. See Responses 7.e. and 41.c.
- b. The Commission adopted an 8:00 AM start time.
- c. The Commission did not reduce the daily bag limit.
- d. See Response 1.d.
- e. See Response 1.e.

60. Evan Jones in oral comment at the June 26, 2013, Commission Meeting

- a. Read comments from an unnamed Department biologist that states the science supporting the regulation changes is not sound and states he does not understand how a reduction to annual limit in Mendocino County will help the Fort Ross abalone population.
- b. Supports the early morning closure (Option 1) at 8:00 AM and believes that this 28 percent reduction should take care of the 25 percent reduction requirement.
- c. Opposes reduction in the daily bag limit (Option 2).
- d. Opposes reduction in the annual limit (Option 4).

Response

- a. Reductions in the take in the fishery overall, including Mendocino Co., are needed to reduce catch in the fishery and prevent excessive effort shift into Mendocino Co. Therefore, the guidelines prescribed in the interim ARMP require a 25 percent reduction in the TAC of the overall fishery when the average density of all eight index sites falls below 0.5 abalone/m². The Fort Ross site closure was proposed because the density at this site fell below the ARMP site closure criteria of 0.25 abalone/m².
- b. The Commission adopted an 8:00 AM start time.

- c. The Commission did not reduce the daily bag limit.
- d. See Response 1.d.

61. Todd Stagnaro, [Member, Northern California Underwater Hunters] in oral comment at the June 26, 2013, Commission Meeting

- a. Believes the early morning closure (Option 1) at 8:00 AM is flawed because it does not consider that the low tide time increases as you go north and that there are still minus tides of -0.5 or lower that occur at or after this time.
- b. Opposes a reduction to the daily bag limit (Option 2).
- c. Opposes a reduction to the annual limit (Option 4).
- d. States that abalone management should be site specific rather than managing the entire fishery area as a whole and that there are better solutions or options for controlling the fishery than the ones the Department presented.

Response

- a. The Commission adopted an 8:00 AM start time. The 23 percent catch reduction estimate for the early morning closure (Option 1) was averaged from abalone reported to be caught before 8:00 AM from abalone report cards. These catch reduction estimates as stated in the ISOR may not be indicative of future reductions in catch due to any shifts in fishing behavior.
- b. The Commission did not reduce the daily bag limit.
- c. See Response 1.d.
- d. See Response 7.e.

62. Charlie Lorenz, [Member, Mendocino Abalone Watch] in oral comment at the June 26, 2013, Commission Meeting

- a. States that he has witnessed the high mortality of abalone in the intertidal due to rockpicking activities.
- b. Supports the early morning closure (Option 1).
- c. Supports the reduction of the annual limit (Option 4) to 12 abalone. Although he is an abalone dive guide he would rather see a reduction in his business volume than a fishery closure due to abalone population shortages.

Response

- a. See Response 6.a.
- b. The Commission adopted an 8:00 AM start time.
- c. See Response 1.d.

63. Ed Schulze in oral comment at the June 26, 2013, Commission Meeting

- a. Supports the Fort Ross site closure.

- b. Support early morning closure (Option 1) at 7:00 AM because he is a rockpicker and he can adjust accordingly as oppose to an 8:00 AM start which greatly diminishes available low tides.
- c. Supports reducing the season (Option 3) by closing the month of November so that Enforcement Division can focus on other hunting activities.
- d. Supports a reduction in the annual limit south of the Sonoma/Mendocino County line (Option 5).
- e. Suggests future management to consider limiting the amount of tags issued for high use areas similar to the deer tag system.

Response

- a. The Commission adopted the Fort Ross site closure.
- b. The Commission adopted an 8:00 AM start time.
- c. See Response 14c
- d. See Response 1.e.
- e. See Response 7.e.

64. Bill Bernard, [Representative, California Coalition of Diving Advocates], in oral comment at the June 26, 2013, Commission Meeting

- a. Supports the Department's revised recommendation put forth at the June 26, 2013 Commission meeting of the Fort Ross site closure, reducing the annual limit (Option 4) to 18 abalone and reducing the annual limit south of the Sonoma/Mendocino County line (Option 5) to 9 abalone.
- b. Also supports another option in lieu of Department's recommendation to achieve 25 percent reduction of reducing the daily bag limit from 3 abalone to 2 (Option 2).

Response

- a. The Commission adopted the Department's revised recommendation at the June 26, 2013 Commission meeting.
- b. The Commission did not reduce the daily bag limit.

65. Dr. Mark Steele, [Member, Waterman's Alliance] in oral comment at the June 26, 2013, Commission Meeting

- a. States that Mendocino County was not affected by the 2011 die off, so reducing the entire fishery does not make sense. Also states that index sites used to manage the fishery are not representative of the entire coastline of the fishery. Cites that management actions are based on trigger densities, but that these are estimates from many transects and have huge error bars. Suggests that when the ARMP is revised, randomly selected sites that are more representative of the coast should be used for the surveys.

- b. Cites that the abalone population in northern California is unnatural since the extirpation of the sea otter, which used to keep abalone densities much lower.

Response

- a. The interim management plan in the ARMP was developed to manage the fishery as a whole with consideration of measured densities at eight fishery index sites in the heart of the fishery area. The sites were chosen based on fishing pressure and the catch from these sites makes up approximately 48% of the fisheries catch. These sites would be the ones to be impacted before the rest of the fishery so management can respond if needed to change fishing pressure. The ARMP interim plan prescribes a reduction in the overall fishery of 25 percent when the average abalone density at the eight index sites falls below 0.5 abalone/m². This takes into account expected shifts in effort into Mendocino Co. following reductions in take in Sonoma Co.

In reference to the comment on variance of survey estimates, the management actions taken were in response to statistically significant reductions in density, taking into account variance. The Department conducts surveys in other sites in northern California; however data from these sites are not used in the formula to adjust take.

- b. See Response 59.a.

66. Milo Vukovich, [President, Sonoma County Abalone Network (SCAN)] in oral and written comment at the June 26, 2013, Commission Meeting

- a. The current annual catch is at 204,000 abalone a year, so we have met the ARMP's required 25 percent reduction from the TAC set by the Commission at 280,000. Thus, there is no need to reduce the annual limit.
- b. States that Mendocino County can handle any effort shift since it has three times the length of coastline than Sonoma County.
- c. Supports the Fort Ross site closure.
- d. Supports the early morning closure (Option 1) at 8:00 AM.
- e. Opposes reducing the daily bag limit (Option 2).
- f. Opposes reducing the season (Option 3).
- g. Opposes reducing the annual limit (Option 4).
- h. Supports reducing the limit south of the Sonoma/Mendocino County line (Option 5) of 9 abalone.
- i. Suggests a two year sunset on the entire regulation package.

Response

- a. The number of abalone caught per year is influenced by many factors, and it is not a factor in reducing the TAC. Without changes in fishing

regulations the catch can increase freely in the next year. Previous catch does not restrict the fishery in the next year.

- b. The ARMP interim plan prescribes a reduction in the overall fishery when the average abalone density at the 8 index sites falls below $0.5ab/m^2$
- c. The Commission adopted the Fort Ross site closure.
- d. The Commission adopted an 8:00 AM start time.
- e. The Commission did not reduce the daily bag limit.
- f. See Response 14.c.
- g. See Response 1.d.
- h. See Response 1.e.
- i. See Responses 24.a, 24.b, and 24.f.

67. Paul Weakland in oral comment at the June 26, 2013, Commission Meeting

- a. Suggests opening up San Francisco, San Mateo and Santa Cruz counties to abalone fishing to reduce fishing effort in the north. Notes there are plenty of abalone in the 30 to 50 feet range, which are considered refuge depths. Also, states that alleviating the poaching issues was not considered in the proposed regulation options.

Response

- a. See Response 5.b.1.- 5.b.3.

68. Karen Garrison, [Pacific Coast Director, Ocean's Program, Natural Resources Defense Council], in oral comment at the June 26, 2013, Commission Meeting

- a. Supports the management guidance in the ARMP.
- b. Supports the Department's revised recommendation put forth at the June 26, 2013 Commission meeting of the Fort Ross site closure, reducing the annual limit (Option 4) to 18 abalone and reducing the annual limit south of the Sonoma/Mendocino County line (Option 5) to 9 abalone.
- c. States that any changes that arise from the peer review process of the ARMP that OST is overseeing should not be a reason to delay action on this regulatory package.

Response

- a. Comment noted.
- b. See Response 64.a.
- c. This comment is outside the scope of the proposed regulation. OST is overseeing the technical review of the Department's density approach in the ARMP and no changes to the ARMP will be made during this review process.

69. Greg Helms [Ocean Conservancy] in oral comment at the June 26, 2013, Commission Meeting

- a. States that it is critical for the Commission to adhere to the management standards set forth in the ARMP.
- b. Supports the Department's revised recommendation put forth at the June 26, 2013 Commission meeting of the Fort Ross site closure, reducing the annual limit (Option 4) to 18 abalone and reducing the annual limit south of the Sonoma/Mendocino County line (Option 5) to 9 abalone.

Response

- a. Comment noted. The Commission is adhering to the management standards set forth in the ARMP.
- b. See Response 64.a.

70. Jim Martin, [Member, Recreational Fishing Alliance, Northern California] in oral comment at the June 26, 2013, Commission Meeting

- a. Supports SCAN's letter to the Commission.
- b. Expressed concern for the criteria to reopen the Fort Ross site after a closure since the ISOR states that it would reopen in 2-6 years while the ARMP calls for a 6,600 abalone per hectare density criteria to be met.
- c. Also, had concerns for the new calculation of the revised TAC mentioned in the Department's presentation at the commission meeting since this new TAC calculation did not have a chance to be vetted by the public
- d. Opposes reducing the annual limit (Option 4).

Response

- a. See Responses 66.a. – 66.i.
- b. The Commission adopted the Fort Ross site closure; however the Commission did not decide on the duration of this closure. As outlined in the interim ARMP, reopening of a closed site will be considered only when the average density at the site from all depths is more than 6,600 abalone per hectare and 3,300 abalone per hectare for refuge/deep (>28 feet) depths. The Department is committed to revising the ARMP during the next two to six years, and if new criteria for reopening a closed site are incorporated, then the reopening of Fort Ross will be evaluated against those criteria.
- c. This comment does not address the proposed regulations. The Commission sets the TAC pursuant to criteria prescribed in the interim ARMP and the most current TAC was set in 2010 at 280,000. The Commission set a new revised TAC at 190,000 abalone at the June 26, 2013 Commission meeting. This new TAC is the result of reducing the previous TAC of 280,000 by 25 percent along with an adjustment for the productivity at the Fort Ross site. This new TAC is the revised TAC the commenter is referring to. At prior Commission meetings held in April

and May, the Department calculated their target catch by reducing the average catch from 2007-2011 by 25 percent. At these meetings the Department had requested a new target set at 198,000 abalone however, this target did not take in to account removing the productivity of the Fort Ross site as prescribed in the ARMP in the event density criteria are met for a site closure. The newly adopted TAC is a product of hitting two reduction triggers at the same time: 1) reducing the fishery due to overall low density; and 2) site closure at Fort Ross.

d. See Response 1.d.

71. Michael Novotny, submitted written comments at the June 26, 2013 Commission meeting

- a. Opposes the original recommendation of reducing the annual limit to 12 abalone
- b. Has observed high mortality of short abalone due to rock picking activities, estimates it exceeds the bag limit by a factor of two.
- c. Suggests the following changes to achieve the 25% reduction:
 - 1. All abalone detached must be kept retained regardless of size;
 - 2. Short abalone less than 7" shall be tagged with three individual abalone tags; and,
 - 3. Impose severe penalties for not following the multiple tag rule for shorts.

Response

- a. See Response 1.d.
- b. See Response 6.a.
- c. The suggested regulation changes are outside the scope of the current regulatory package.
 - 1. This alternative was evaluated and rejected in the ISOR.
 - 2. Eliminating the current minimum size limit (Alternative 2) was considered and rejected in the ISOR. Abalone tagging requirements are found in subsection 29.16(b) which is not proposed for amendment in the current regulatory package.
 - 3. Establishment of penalties is outside the authority of the Commission

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VII. Location of Department files:

Department of Fish and Wildlife
1416 Ninth Street
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

- 1) Increasing the minimum size limit. Increase the minimum size limit to either seven and three quarter or eight inches from the current seven inch limit. An eight inch size limit is estimated to reduce the catch by 64% based on creel survey data. This alternative is rejected due to the following reasons:
 - While increasing the size limit may allow a longer period of reproduction, it will likely increase mortality related to injuries sustained during inadvertent removal and subsequent replacement of undersized animals between the present size limit and the new larger size limit.
 - Natural mortality would reduce the number of larger animals available to the fishery, compared to 7-inch animals. Thus the overall fishery yield could decrease, with little or no biological benefit to the stock.
- 2) Eliminate the current size limit. This alternative suggests replacing the minimum size limit with the requirement to keep any abalone collected towards the bag limit. Proponents of this alternative suggest that elimination of the size limit would result in the reduction of incidental mortality due to picking undersize abalone. This alternative is rejected for the following reasons:
 - The current size limit is in place to maximize the fishery yield while allowing abalone time to reach sexual maturity and spawn before entering the fishery. Allowing the take of abalone of any size will potentially remove immature abalone from the fishery, thus reducing the chance for reproduction.
 - There is also no guarantee that poaching or incidental mortality will be reduced.
- 3) Creation of a second abalone report card that would have increased geographic restrictions and additional costs. This alternative was considered as another method to further reduce the take in Sonoma and Marin counties by splitting the tags between two cards with the second card having increased geographic restrictions and additional costs. The first card could be used at all sites including Sonoma and Marin counties while the second card could only be used in Mendocino County and areas north.

Creating a second card could generate additional funds for managing the abalone resource, because persons wishing to continue fishing after filling their first card would be required to purchase a second card for the remainder of the season. This would also result in those persons who

most heavily utilize the resource contributing more funding to the enforcement and management of that resource.

This alternative is rejected for the following reasons:

- It would increase the cost of abalone fishing for those who might purchase a second card.
- Illegal take could increase since people could purchase more than one card
- It would increase the complexity of the regulations, enforcement efforts, data entry and analysis.
- It would cost the Department approximately \$13,000 to redesign the card.

(b) No Change Alternative:

Evidence exists that current levels of take may be unsustainable, especially in Sonoma County. The no change alternative goes against established ARMP management guidance and may require that the Commission consider fishery closure as prescribed in the ARMP if current declining trends in density continue and fall below the trigger level for fishery closure.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed 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:

The adopted regulations provide the required 25% reduction in the fishery with consideration to the least adverse economic impacts on small business. Other alternatives that may have greater impact on small business were rejected.

IX. 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 significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Depending on which regulatory option the Commission chooses, the proposed action could reduce recreational abalone activity expenditures and thus reduce direct revenue by 1.4 percent to as much as 36.9 percent. These outcomes could result in adverse revenue impacts to businesses ranging from \$182,000 (2009\$) to \$4.8 million (2009\$) in potential direct revenue losses. In the North Coast area most affected by these potential losses, the resulting impact to the economy could range from \$324,000 (2009\$) to \$8.5 million (2009\$) in total economic output losses. This is due to the ripple effect each dollar of direct revenue has on the affected regional economy's total output potential. Nonetheless, the proposed regulations would not result in a significant statewide adverse economic impact.

The impacts are not likely to affect 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.

(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 of new business, the elimination of existing businesses or the expansion of businesses in California.

Depending on which regulatory option the Commission chooses, the potential reduced recreational abalone activity could result in job losses ranging from 0 jobs to as many as 82 jobs in abalone sport fishing related businesses. The Commission does not anticipate the creation of any new jobs.

Benefits to the Health and Welfare of California Residents: Depending on which regulatory option the Commission chooses, the potential reduced recreational abalone activity in the spring months when ocean conditions can be dangerous could result in enhanced fisherman safety.

The Commission does not anticipate benefits to California worker safety.

The Commission anticipates benefits to the State's environment. The proposed regulation changes are being made in order to effectively manage the red abalone fishery and maintain its sustainability. The Marine Life

Management Act mandates that fisheries in California are managed sustainably. Abalone populations in California have declined and the fishery south of San Francisco was closed in 1997. The proposed regulations will benefit the abalone resource, abalone fishery and local businesses by maintaining a healthy viable fishery for years to come. Red abalone is an iconic species in California and one that is part of the state's natural heritage.

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

The agency is not aware of any cost impacts that a representative 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:

Unknown, however the potential exists for some loss in recreational abalone report card sales revenue if some individuals decide not to participate in the fishery due to reduced annual limits.

(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.

Updated 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 minimum size limit.

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. Observations by Department of Fish and Wildlife (Department) wildlife officers and data analyses by biologists were considered in proposing the regulation changes, as well as input from fishing groups, the Recreational Abalone Advisory Committee, non-governmental organizations, and the public. Recent scuba surveys indicate that the average density of emergent abalone (sublegal and legal sized) has trended downward over the past five to ten years. Average density is now at 0.47 abalone/m² for the index sites, which is below one of the management triggers established in the ARMP. Low average densities and declining trends indicate a risk that leaving regulations unchanged could result in further reductions in average density across the fishery which could lead to fishery closure if average densities fall below 0.30 abalone/m². Consequently, the Department is proposing regulations which will reduce the catch so that further reductions in average density maybe prevented.

Additionally, average abalone density at the Fort Ross index site has fallen below the trigger level for site closure within the ARMP. The Department is proposing site closure of the Fort Ross area for a period between two and six years to allow recovery of abalone stocks to a level that allows reopening of the area. The Commission may select the duration of closure within the two to six year range or may elect to close the site without specifying a sunset date. The Department will continue to monitor density at Fort Ross (triennially) and recruitment events (annually) in northern California during the site closure in order to evaluate if the site should re-open or remain closed based on current ARMP criteria. The Department also anticipates revising the ARMP during this time frame to transition to the long term, area-based, management plan. Re-opening Fort Ross will likely be considered under the revised ARMP, as well as based on evidence of recovery at the site.

The proposed regulations will close the Fort Ross area and options are provided to reduce fishing hours, the annual limit, daily bag limit, and/or season. The following summarizes the options for regulatory change in Title 14, Section 29.15:

Option 1: Change the legal fishing hours to begin at a time within the range of 7:00 AM to 8:00 AM instead of one-half hour before sunrise.

Option 2: Reduce the daily bag and possession limit from three abalone to two abalone.

Option 3: Reduce the season from seven months to fewer open months with various sub-options for closing months. If the Fort Ross Area Closure is not adopted, the open season for the Fort Ross area may be different than the general open season.

Option 4: Reduce the annual limit with various sub-options for reduction (21 to 9 abalone).

Option 5: Targeted catch reduction in Sonoma and Marin counties by apportioning tags by areas (3-21 tags in the targeted area, not to exceed the total annual limit selected in Option 4).

Options 1 through 5 are designed to reduce the total catch by up to an estimated 33 percent. This conforms to provisions in the ARMP that prescribe a 25 percent reduction in catch when average density levels are below the ARMP trigger for management action.

The Commission may adopt one or more options or a combination of options.

In all options, regulatory language concerning a temporary special closure of Sonoma County is repealed.

The regulation options will benefit the red abalone population in northern California by enhancing the sustainability of the resource. Higher densities of red abalone in closer proximity to their neighbors have better fertilization and reproductive success than those at low densities. The proposed regulation changes are anticipated to increase the density of red abalone, leading to a healthier resource and improving the long-term health of the fishery.

Higher densities of red abalone are anticipated to enhance local small businesses in the coastal economy that rely on abalone fishing for their income. A healthy active fishery will attract more business to the coastal regions in the north particularly in the counties of Marin, Sonoma, Mendocino and Humboldt.

The environment will benefit from the proposed regulation options in the following ways: (1) The algal community will continue to be grazed by a stable population of red abalone in northern California rocky subtidal habitats. This grazing will maintain algal communities and prevent them from overgrowing reef communities; (2) Abalone will continue to act as important macrograzers maintaining substrate suitable for other invertebrates; and (3) Abalone will provide an important food source for other marine life in rocky subtidal kelp communities.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. Section 20, Article IV, of the State Constitution specifies that the Legislature may delegate to the Fish and Game Commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. The Legislature has delegated to the Commission the power to regulate the recreational take of abalone (sections 200, and 205, Fish and Game Code). 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 California Code of Regulations and finds no other state agency regulations pertaining to the recreational take of abalone.

UPDATE:

At its June 26, 2013 meeting, the Fish and Game Commission (Commission) adopted the Fort Ross site closure, shortened the fishing day by establishing a start time at 8:00 AM (Option 1), reduced the annual limit to 18 abalone per year (Option 4), and limited the take from Sonoma and Marin counties to 9 abalone per year (Option 5).

Together these changes are expected to reduce the total catch by up to 32 percent.

REGULATORY LANGUAGE

Section 29.15, Title 14, CCR, is amended to read:

(a) ~~Geographic Open Area~~: Except in the ~~special closure~~ area described in subsection (a)(1) below, 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.

~~(1) Special Closure: No abalone may be taken between a line drawn due west magnetic from the Sonoma/Marin County line, north to a line drawn due west magnetic from the Sonoma/Mendocino County line (All of the Sonoma County coast line). This special closure is in effect from October 4, 2011 through March 30, 2012, and is repealed on March 31, 2012.~~

(1) No Abalone may be taken in the Fort Ross area bounded by the mean high tide line and a line drawn due south true from 38°30.63' N, 123°14.98' W (the northern point of Fort Ross Cove) and a line drawn due west true from 38°29.45' N, 123°11.72' W (Jewel Gulch, south boundary Fort Ross State Park).

(b) Open Season and Hours:

~~(1) Open Season: In the Fort Ross area bounded by the mean high tide line and a line drawn due south true from 38°30.63' N, 123°14.98' W (the northern point of Fort Ross Cove) and a line drawn due west true from 38°29.45' N, 123°11.72' W (Jewel Gulch, south boundary Fort Ross State Park) abalone may only be taken during the months of June, August, September, October and November. In the remainder of the geographic area defined in subsection (a) above, abalone:~~ Abalone may be taken only during the months of April, May, June, August, September, October and November.

~~(2) Open Hours: Abalone may be taken only from one-half hour before sunrise 8:00 AM 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~~ 18 abalone during a calendar year. In the Open Area as defined in subsections 29.15(a) and 29.15(a)(1) above, not more than 9 abalone of the yearly trip limit may be taken south of the boundary between Sonoma and Mendocino Counties.

(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 undersized 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 shall not be removed from their shell, except when being prepared for immediate consumption.
 - (1) Individuals taking abalone shall maintain separate possession of their abalone. Abalone may not be commingled in a float tube, dive board, dive bag, or any other container or device, until properly tagged. Only after abalones are properly tagged, as described in Section 29.16(b), Title 14, CCR, may they be commingled with other abalone taken by another person.
- (h) Report Card Required: Any person fishing for or taking abalone shall have in their possession a nontransferable Abalone Report Card issued by the department and shall adhere to all reporting and tagging requirements for abalone defined in Sections 1.74 and 29.16, Title 14, CCR.

Note: Authority cited: Sections 200, 202, 205, 210, 220, 240, 5521 and 7149.8, Fish and Game Code. Reference: Sections 200, 202, 205, 220, 5521, 7145 and 7149.8, Fish and Game Code.