

STAFF SUMMARY FOR APRIL 13-14, 2016

4. COMMERCIAL SEA URCHIN (CONSENT)**Today's Item**Information Action

Adopt proposed changes to the commercial sea urchin fishing regulations.

Summary of Previous/Future Actions

- Update on process to amend regulations Dec 9-10, 2015; San Diego
- Notice hearing Feb 10-11, 2016; Sacramento
- **Today's Adoption hearing Apr 13-14, 2016; Santa Rosa**

Background

The California Sea Urchin Commission (CSUC) submitted a regulation change proposal developed in consultation with DFW to address long-standing, industry concerns (Exhibit 2). That proposal amends Section 120.7, Title 14, CCR. The proposed change would, among other things, reduce the permit capacity goal, and address a loophole in the timing of an annual drawing to issue new urchin diving permits (referred to as the "lottery loophole" by CSUC), which has led to annual increases in permits above the capacity goal.

In Oct 2015, FGC agreed to schedule the proposed rulemaking for 2016 based on CSUC's commitment to provide resources to support the rulemaking. At FGC's Dec 2015 meeting, staff recommended that the sea urchin rulemaking be divided into two phases due to the timing of regulatory scheduling:

- Phase 1 (today's item) would address the most immediate concern, the "lottery loophole", in advance of the next scheduled new entrant drawing this year (Exhibit 1);
- Phase 2 would revise the capacity goal, update the new entrant drawing system, and add a day back to fishing days in southern California. Phase 2 will be scheduled once Phase 1 is completed.

Significant Public Comments (N/A)**Recommendation**

FGC staff: Adopt the Phase 1 changes to Section 120.7 as proposed in Exhibit 1.

Committee: Recommended FGC schedule the CSUC proposal for rulemaking.

DFW: Adopt the changes to the regulations as proposed.

Exhibits

1. [ISOR](#)
2. [California Sea Urchin Commission Revised Proposal, received Sep 29, 2015](#)

Motion/Direction

Moved by _____ and seconded by _____ that the Commission adopts the consent calendar, items 3-5.

instituted in regulation in the 1990s, which was approached in approximately 2007.

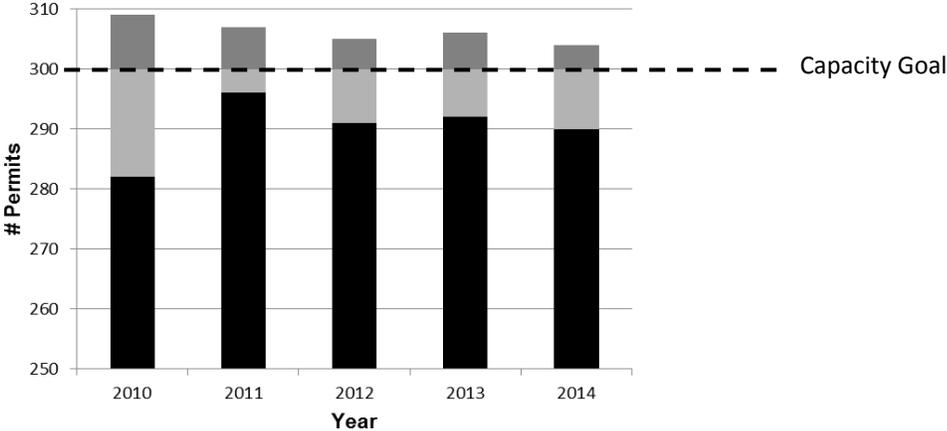
Existing regulations (subsection 120.7(d)(2), Title 14, CCR) specify that the number of renewed permits used to determine if new permits will be available for issuance is based on renewals from the portion of the current permit year prior to August 1 (i.e., April 1- July 31) and compared to the capacity goal of 300.

The proposed regulation would modify that provision to determine the number of renewed permits based on the immediately preceding full permit year (i.e., April 1 through March 31), to avoid issuance of new permits above 300 before accounting for the total number of prior permits renewed in the permit year.

Rationale: The current annual commercial fish permit year runs from April 1 through March 31 of the following calendar year. Tallying renewals in the middle of the permit year (before August 1) does not account for potential late permit renewals from August 1 to March 31. This has led to perpetual issuance of permits above the 300-permit capacity goal. The proposed change will prevent issuance of permits above the capacity goal by ensuring that all renewals are accounted for when determining if new permits will be available pursuant to subsections 120.7(d)(2) and 120.7(e).

Figure 1 shows the number of permits issued under current regulations over the past five years (2010-2014), and illustrates how current regulations have resulted in recurring issuance of annual permits in excess of 300.

Figure 1. Permits issued under current regulations, 2010-2014.

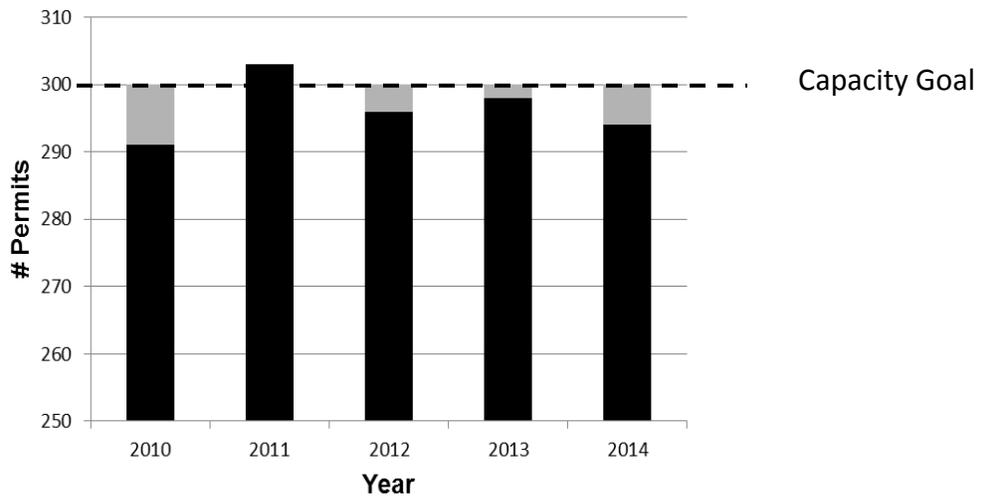


Legend

- Prior permits renewed before Aug 1 of permit year (Apr 1- Jul 31)
- New permits issued through drawing based on renewals prior to Aug 1
- Prior permits renewed Aug 1 to end of permit year (Aug 1- Mar 31)

Figure 2 provides a comparison of the number of new permits that would hypothetically have been issued if determined based on the total number of prior permits renewed in the full permit year (i.e., April 1 – March 31) compared to the capacity goal (300). The hypothetical scenario provided in Figure 2 illustrates how determining new permit availability based on renewals from the full preceding permit year is more effective at meeting the original intent of not exceeding the capacity goal.

Figure 2. Hypothetical scenario estimating the number of new permits that would have been issued based on the actual number of permits issued in the full permit year, 2010 – 2014.



Legend

- Renewed permits for full permit year (Apr 1 - Mar 31)
- Hypothetical new permits if issued based on full preceding permit year (as proposed)

Existing regulations (subsection 120.7(m), Title 14, CCR) require that each permittee shall record daily fishing activity records on a logbook provided by the Department, and specifies to which office the completed daily records shall be sent based on the location of fishing activity. The proposed regulation would add a cross-reference to Section 190, Title 14, CCR, regarding fishing activity records, and would delete the location of Department offices where fishing activity records shall be sent, which is already specified on the logbook forms.

This change is proposed to ensure consistency between this section and other regulatory sections pertaining to logbooks that already cross-reference Section 190. The proposed change will ensure that future changes to Section 190 pertaining to submission of logbooks also apply to sea urchin logbooks. Further, logbook forms used to record sea urchin fishing activity records already specify the Department locations for record submissions. Since the logbook forms are incorporated by

reference in subsection 120.7(m), the change would eliminate redundancy between the logbook and regulatory text.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 1050, 9054 and 9055, Fish and Game Code.

Reference: Sections 1050, 7850, 7852.2, 7857, 9054 and 9055, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None.

- (d) Identification of Reports or Documents Supporting Regulation Change:

None.

- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

June 18, 2013 Marine Resources Committee meeting, Santa Barbara: discussion of proposal.

August 5, 2014 Marine Resources Committee meeting, San Diego: discussion of revised proposal.

October 8, 2014 Fish and Game Commission meeting, Mt. Shasta: Discussed and accepted proposal to schedule for rulemaking.

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

Provide for transferability of sea urchin diving permits. This alternative was considered and rejected because the qualifying criteria for receiving a transferable permit are more appropriate to consider through development of a fishery management plan and after the permit capacity has reached a stable and desirable level.

- (b) No Change Alternative:

The no change alternative would keep the existing regulations in place. The schedule for counting total permit renewals and determining if new permits will be made available would remain April 1 to July 31, before the total number of renewed permits in the permit year is known. This "lottery loophole" would continue to result in issuance of new permits above the capacity goal.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purpose 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.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. 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 initial 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 because the proposed action will not increase costs or reduce harvest quotas. These actions are intended to align the number of permits issued with the existing fishery permit sales restrictions which should increase the average catch per unit of effort and ensure the long-term sustainability of the fishery.

(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:

No impacts on the creation or elimination of jobs within the state, the creation of new businesses, the elimination of existing businesses or the expansion of businesses are anticipated because the proposed action will not increase costs or reduce harvest quotas. These actions are intended to align the number of permits issued with the existing fishery permit sales restrictions which should increase the average catch per unit of effort and ensure the long-term sustainability of the fishery. The Commission does not anticipate any benefits to the health and welfare of

California residents or worker safety.

- (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:

None.

- (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.

VII. Economic Impact Assessment:

The sea urchin industry has expressed concern about possible excess capacity in the fishery that may result in overutilization or interfere with efficient and economic operation of the fishery. The proposed regulatory action is intended to bring the number of permits into alignment with the existing permit sales limits to prevent overutilization and to ensure efficient and economic operation of the fishery.

- (a) Effects of the Regulation on the Creation or Elimination of Jobs Within the State:

No impacts on the creation or elimination of jobs within the state are anticipated because the proposed action will not increase costs or reduce harvest quotas. These actions are intended to align the number of permits issued with the existing fishery permit sales restrictions which should increase the average catch per unit of effort and ensure the long-term sustainability of the fishery.

- (b) Effects of the Regulation on the Creation of New Businesses or the Elimination of Existing Businesses Within the State:

No impacts on the creation of new businesses or the elimination of existing businesses are anticipated because the proposed action will not increase costs or reduce harvest quotas. These actions are intended to align the number of permits issued with the existing fishery permit sales restrictions which should increase the average catch per unit of effort and ensure the long-term sustainability of the fishery.

- (c) Effects of the Regulation on the Expansion of Businesses Currently Doing Business Within the State:

None.

- (d) Benefits of the Regulation to the Health and Welfare of California Residents:

None.

- (e) Benefits of the Regulation to Worker Safety:

None.

- (f) Benefits of the Regulation to the State's Environment:

None.

- (g) Other Benefits of the Regulation:

None.

Informative Digest/Policy Statement Overview

State law (Section 9054, Fish and Game Code) authorizes the Commission to set the conditions for issuance of commercial sea urchin diving permits, and to limit the number of permits that may be issued when necessary to prevent overutilization or to ensure efficient and economic operation of the fishery on a statewide basis or within selected geographical areas.

Proposed changes to regulations:

- Subsection 120.7(d)(2), Title 14, CCR, currently provides for new sea urchin diving permits to be issued annually, dependent on whether the number of renewed permits from the prior year is less than or greater than the capacity goal of 300. The proposed amendments to the regulation would ensure that if any new permits are added, the capacity goal of 300 permits will not be exceeded. All qualified diving permits from the previous year are eligible to be renewed.
- Existing regulations (subsection 120.7(m), Title 14, CCR) require that each permittee shall record daily fishing activity records on a logbook provided by the Department, and specifies to which office the completed daily records shall be sent based on the location of fishing activity. The proposed regulation would add a cross-reference to Section 190, Title 14, CCR, regarding fishing activity records, and would delete the location of Department offices where fishing activity records shall be sent, since this information is already specified on the logbook forms.

The proposed regulatory action will benefit fishermen, processors, and the State's economy in the form of a healthy sustainable fishery, and future harvestable sea urchin populations.

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 commercial take of sea urchins (Sections 9054 and 9055, 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 commercial take of sea urchins.

Regulatory Text

Section 120.7, Title 14, CCR, is amended to read:

. . . *[No changes to subsections (a) through (c)]*

(d) Number of Permits.

(1) All qualified prior sea urchin diving permittees shall be eligible to receive diving permits regardless of the number issued.

(2) ~~If the number of diving permits issued to prior permittees is more than 300, the total number of new sea urchin diving permits available for issuance shall be one-tenth the difference between the total number of sea urchin diving permits issued prior to August 1 of the current permit year and the total number of sea urchin permits issued during the immediately preceding permit year.~~ If the number of diving permits issued to prior permittees is less than 300, the number of new sea urchin diving permits to be issued shall be the difference between the number of diving permits issued to prior permittees in the immediately preceding permit year (ending March 31) and 300. If the number of permits issued to prior permittees is 300 or more, no new sea urchin diving permits shall be available.

. . . *[No changes to subsections (e) through (l)]*

(m) Logbooks. ~~Each~~ Pursuant to Section 190 of these regulations, each permittee shall complete and submit an accurate record of all sea urchin fishing activities on a form (DFG-120.7 (2/08)), incorporated herein by reference, provided by the department before the sea urchins are landed. The completed daily records shall be sent to the department address specified on the logbook on or before the tenth day of each month following the month to which the records pertain. ~~Fort Bragg office of the Department of Fish and Game for fishing activities north of the Monterey San Luis Obispo county line, and to the Los Alamitos office for fishing activities south of the Monterey San Luis Obispo county line on or before the tenth day of each month following the month to which the records pertain.~~

. . . *[No changes to subsections (n) through (p)]*

Note: Authority cited: Sections 713, 1050, 9054 and 9055, Fish and Game Code.
Reference: Sections 713, 1050, 7850, 7852.2, 7857, 9054 and 9055, Fish and Game Code.



CAPACITY REDUCTION PROPOSAL

IMPROVED REGULATIONS FOR THE CA. SEA URCHIN FISHERY A Framework for Sustainability and Enhanced Socio-economic Viability

Submitted by the California Sea Urchin Commission
To the California Fish & Game Commission
October 7, 2015

Sound fisheries management planning involves input from both managers and stakeholders including the California Fish and Game Commission (CF&GC). Good management must have the flexibility to react in a timely manner to changes in the resource, the effects of regulations, improved science, and evolving markets.

Understanding that good fisheries policy involves a sustainable resource, the business of fishing, and the essential fisheries information (multidisciplinary science) to help create and maintain a fishery that is sustainable in biomass, as well as social and economic integrity.

Working with The California Department of Fish and Wildlife (the Department), the California Sea Urchin Commission (CSUC) is proposing to the California Fish and Game Commission (the Commission), a number of changes to the current Sea Urchin regulations. The CSUC believes these changes will help secure the long term viability of California's valuable Sea Urchin Fishery, in meeting the goal of The Marine Life Management Act.



Recommendations:

1. Reduce permit capacity threshold to 150
2. New entry system with a 10:1 (ten to one) system
3. Close the 'lottery loop hole'
4. Add one fishing day, June-October in Southern CA

1) **Reduce the current capacity by allowing non renewed permits to leave the fishery.**

A. Current Practice – there are 300 permits. Ninety-Seven (97) percent of the harvest is caught by 150 permit holders. The remaining 150 permits are latent and if they become fully active could potentially cause unsustainable pressure and result in harvest restrictions.

B. Proposal – to reduce capacity threshold to 150 permits over an extended period of time to gradually reduce harvest pressure. Recommendation number 2 will allow for new entrants at sustainable levels.

Reducing capacity assures a sustainable fishery from over harvesting. This can be accomplished through natural attrition over many years, incentives to retire permits, but it could also include a “permit buyback program” developed at a later date if desired and with available funding.

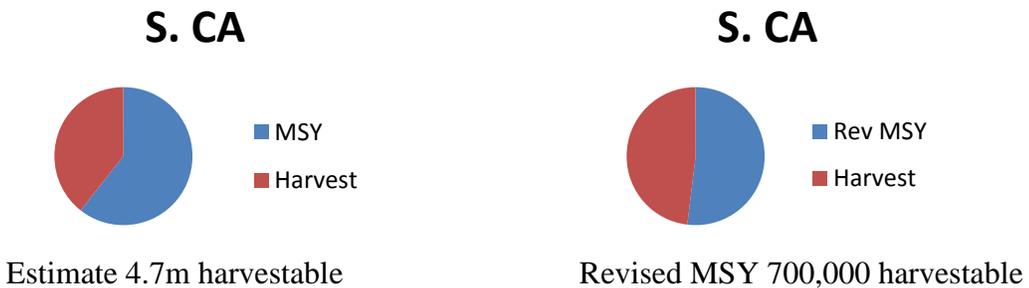
Traditionally, sea urchin harvest has been controlled by limiting effort through minimum size, the number of open harvest days, and restricting the number of divers.

Reasoning in Support:

- Compaction of fishing pressure. The implementation of the Marine Life Protection Act (MLPA) has resulted in an estimated loss of 40+% of the dive fishing grounds to Marine Protected Areas (MPA’s), which results in the loss of some of the most productive locations in terms of poundage and/or quality.
- Reduces latent capacity. Department data shows for the past several years 150 divers have harvested approximately 97% of the poundage landed. If all 300 divers were active it’s possible the fishery might not remain economically sustainable due to the added harvest pressure.

Counter Argument: (Processor point of view)

- Several sea urchin processors have voiced concern about reducing the number of licenses. They make the point that they cannot presently fill their orders and additional active divers can provide additional capacity. They cite Peter Kalvass’ Maximum Sustainable Yield (MSY) study that was completed in 1994 indicating the MSY as 13.4 million pounds and current harvest as 8.7 million pounds in Southern California. They claim the difference 4.7 million pounds are harvestable and more divers could access those additional urchins.



Counter Argument Fails to Consider: (Fishermen point of view)

- The processor argument fails to consider that MSY is a theoretical calculation based on previous harvests. The MSY model was developed prior to the adoption of the Marine Protected Areas (MPA’s) which has reduced many prime fishing grounds. Taking a conservative 30 percent loss of fishing grounds, the 13.4 MSY in Southern California can be reduced to 9.4 million pounds (13.4 - .30%). The difference of 700,000 pounds (9.4 – 8.7) reflects a mere 8 percent of additional harvest, not 4.7 million pounds as the processors claim. Thus keeping a sustainable fishery.

- Urchins feed on kelp as their food source. The oceans have been experiencing a warm water event which negatively impacts kelp production. Divers have been reporting that locating harvestable urchins with adequate sized roe has been difficult in the last nine months. The warm water is an indication of a coming El Nino this Fall and Winter.
- Smaller urchins results in smaller recovery of roe and lower economic returns. Increasing harvest capacity (more active divers) will only exacerbate the fishery dynamics.
- A lower number of divers can maintain a viable/sustainable fishery. Additional divers over the current level will eventually deplete the resource and require aggressive regulations such as closures which will disrupt the orderly fulfillment of orders. If closures are needed, customers will find alternate sources of supplies, risking market stability.
- Counting numbers of divers or permits is not appropriate for this fishery. What is most important is the number of pounds landed by each diver as it's a better indicator of sustainability.



2) **New entrant diver lottery:**

- A. Current Practice – licenses are valid from April to March. Licenses are renewed in April. Licenses can be renewed up through March but as the year progresses the late penalties increase. In June the License and Revenue Branch accounts for un-renewed licenses and on July 1 a lottery is held on a 1:1 basis for each license which is not renewed under the 300 threshold. Late renewals during the year increase the licenses to over 300 following after the lottery.**
- B. Proposal – to allow for an orderly entry of new divers by adding one new diver for each 10 which drop out.**

3) **Close Lottery Loop Hole**

- A. Current Practice – the ability to renew a license after the lottery increases the capacity.**
- B. Proposal – to cease the annual lottery until ten permits drop out. The number of permits dropped should be a rolling number as there could be less than ten each year. Account for non-renewals after the March 31 year-end. Therefore no new permits can be added during the fiscal year.**

Change the current license system to a **strictly priority based** system, with the diver or qualified tender who has been in the lottery the longest given the first opportunity to receive a permit based on a 10:1 ratio....for every 10 divers who leave the fishery 1 new entrant is provided a permit. This will allow limited access to the fishery, while still moving towards a lower capacity goal.

The first lottery after the new regulations are approved (**2016**) would be to settle any ties between entrants by prioritizing those who have applied unsuccessfully in the past. Prioritize the applicants by the number of years attempted on a first come first served basis. After that, any new applications would be given a place based on when (day and time) their application is received by the Department’s License and Revenue Branch.

In order to close the so called **Lottery Loop Hole**, an additional change to the lottery is required. Under current regulations the number of permits available in the lottery are based on the number that has been renewed by June 30 of each year. However, divers have until March 31 of the following year (the license year) to renew, resulting in a situation where by, **capacity is added** to the fishery.



It is therefore recommended that the available permits be based on a 16 month cycle (April 1 of the current calendar year to June 30th of the following year to renew a license, as well as purchase the license for the current year). Under this system no new permits would be given out the first year the new regulations are in effect, (e.g.. if the new regulations are approved for 2016, it would be 2017 before any new permits would be issued).

Reasoning:

- Guarantees those waiting for diver permits the longest will be given the first opportunity.
- 10:1 keeps open limited access to the fishery, until such time as permits may become fully transferable.
- Closes the lottery loop hole, while allowing divers the same time to renew a license.

Counter Argument: (Processor point of view)

- Processors argue that 10:1 does not allow enough new entrants to enter the fishery. They would like to see a lower threshold, such as 5:1.

Counter Argument Fails to Consider: (Fishermen point of view)

- It’s recognized that it will take years for latent permits to retire. Increasing the new entrants from 10:1 to 5:1 will only delay capacity reduction making it harder to reach a sustainable fishery.
- Fishing capacity should be reviewed every few years to determine the optimum level based on harvest, economics and other social aspects of the fishery to maintain a sustainable fishery.



SOUTHERN CALIFORNIA

Add One Day to the Open Days of the Week, June through October

A. Current Practice – June through October the fishery is open Monday through Thursday. From November through May the fishery is open seven days.

B. Proposal – add Friday to the June through October fishing calendar.



The current harvest schedule of Monday through Thursday, June through October results in delayed market replenishment at the start of each week. The total number “days back” will add 21 days to the summer season.

Urchins “held over” for shipments from the previous **Thursday** lose some of their freshness, and related quality issues, resulting in a marketing problem that is opening the door to competition from foreign suppliers. A reliable supply of a quality product, at a fair price is essential to maintaining and expanding California’s domestic and international market share.

Reasoning:

- The domestic (U.S.) market for California Red Sea Urchins has **grown dramatically** during the last decade and is **continuing to expand**, helping to offset the **economic damage** the California Sea Urchin industry suffered with the loss of a substantial portion of its sales to the Japanese market.
- The U.S. market has its **highest product demand** during the **summer months into early fall**.
- By adding one day a week to the current harvesting schedule (June through October), the California Sea Urchin Industry will be better positioned to **maintain its historic advantage** over competition from foreign and other domestic suppliers by increased reliability of supply, and a fresher, higher quality product.
- The marketplace dynamics are rapidly changing. Many fisherman are selling live urchins or conducting direct sales to the end users at local ports. They need a Friday fishery to keep the urchins in top conditions for their Saturday markets.
- Poor weather conditions: Sea urchin harvesters will have **greater flexibility** in working around **dangerous** ocean conditions, and **military** training activities if they have greater flexibility in setting their diving schedule.
- Marine Protected Areas (MPA): One day back will not be a threat to the resource. The MPA have eliminated 40 percent of the available diving areas. These MPA provide added biomass protection to the fishery to buffer any additional harvest pressure. It’s highly unlikely that the added pressure would bring the urchin population 30 percent below the original biomass levels.

Counter Argument:

Both fishermen and processors are in support of increasing fishing opportunity.

NORTHERN CALIFORNIA

Due to harvest concerns, the CSUC is recommending no change to the Northern California season structure.

Counter Argument:

Both fishermen and processors are in support of not changing Northern California's season structure.