

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION  
(Pre-publication of Notice Statement)

Add Sections 29.17 and 127  
Title 14, California Code of Regulations  
Re: Kellet's Whelk

- I. Date of Initial Statement of Reasons: October 17, 2011
- II. Dates and Locations of Scheduled Hearings:
- |                         |           |                    |
|-------------------------|-----------|--------------------|
| (a) Notice Hearing:     | Date:     | September 15, 2011 |
|                         | Location: | Redding, CA        |
| (b) Discussion Hearing: | Date:     | November 17, 2011  |
|                         | Location: | Santa Barbara, CA  |
| (c) Adoption Hearing    | Date:     | December 15, 2011  |
|                         | Location: | San Diego, CA      |

III. Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

**Present Regulations**

Under existing law, Kellet's whelk, *Kelletia kelletii*, may be taken for commercial purposes by hand collecting while diving and incidentally in lobster and rock crab traps. Kellet's whelk may not be taken in the tidal invertebrate zone between the high tide mark and 1,000 feet beyond the low tide mark (Title 14, CCR §123) and there are no size limits, seasons or catch quotas when fishing for Kellet's whelk by diving or trapping. There is a recreational bag limit of 35 whelk per day, the standard recreational bag limit for species without a specified bag limit and there is no recreational size limit. Whelks cannot be taken recreationally in any tidepool or the areas between the high tide mark and 1,000 feet seaward and lateral to the low tide mark (Title 14, CCR §29.05). The fishery takes place entirely within state waters.

**Emerging Fishery**

The Kellet's whelk, is a large predatory gastropod commonly found in kelp forests and rocky reef habitat from central Baja California to Point Conception.

Spawning has been observed to occur from March through July, however, recent research indicates that the time of spawning, size at first reproduction and maximum size may vary for whelk across their range. Kellet's whelk are slow growing, long lived, and form aggregations when breeding and releasing eggs, all traits that increase the risk of unsustainable fishing and lessen the rate of recovery in the event of overharvest. The population status of Kellet's whelk is unknown.

Recently, the species has gone from a bycatch species in primarily trap fisheries to what appears to be a targeted species. In the past twenty years, landings have grown from less than 20,000 pounds to more than 180,000 pounds ( and the number of Individuals taking whelk has grown from less than 20 individuals to over 70 (Figure 1). Kellet's whelk are fished for human consumption and are sold live in fresh fish markets.

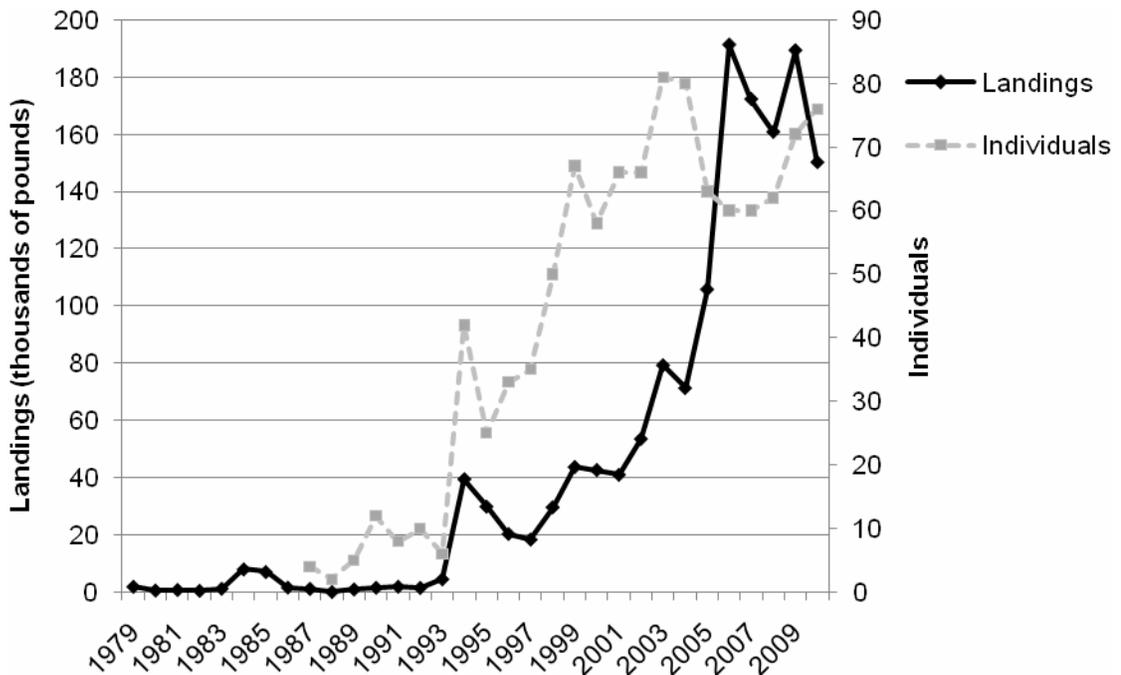


Figure 1. Kellet's whelk commercial landings and number of individuals making landings, 1979 - 2010. Data source: DFG landing data.

The majority of whelk are landed in five ports in the southern California. The top port is Santa Barbara, followed by San Diego, Terminal Island, San Pedro and Dana Point. These top five ports account for 86% of the catch (Figure 2). Ex-vessel value in the fishery closely tracks landings over time with the highest values during the years of the highest landings. The value of the fishery in 2010 was \$117,000 with the average of the last five years slightly higher at \$134,000.

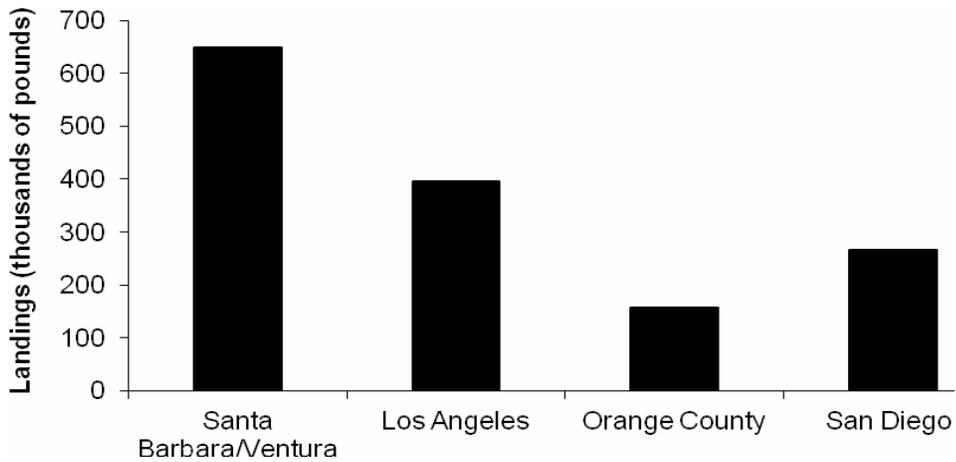


Figure 2. Landings by geographic area for Kellet’s whelk 1979 – 2010. Data source: DFG landing data.

Landings of whelk are spread evenly across the 12 months of the year. The southern rock crab fishery is open year round while the lobster fishery is open from early October to mid-March. Divers are permitted to take whelks year round. The take of Kellet’s whelk by diving is highest in the months that correspond to the spawning and egg laying periods of March to July (Figure 3).

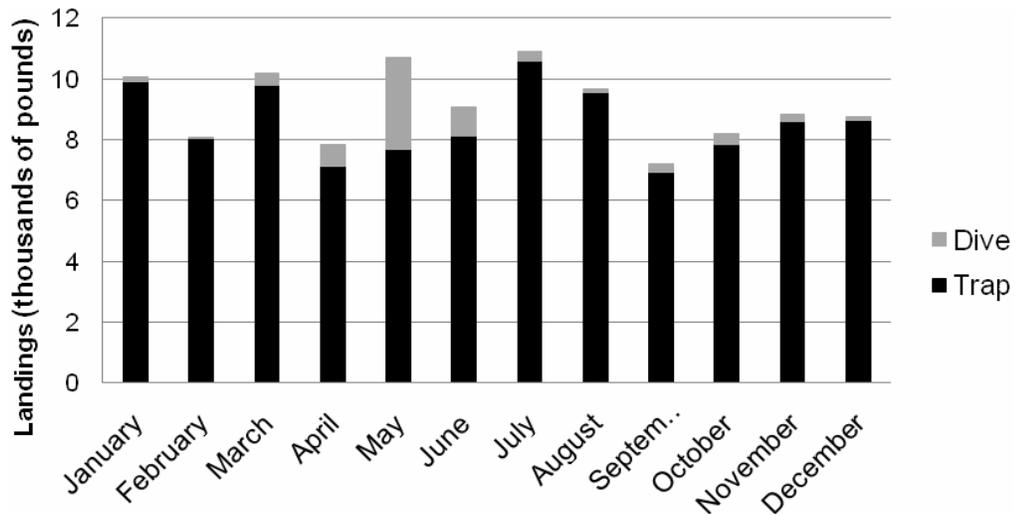


Figure 3. Average monthly Kellet’s whelk landings 2000 – 2010. Data source: DFG landing data.

The growing concern surrounding the fishery for Kellet’s whelk has been discussed by the Commission’s Marine Resources Committee several times over the last two years. In addition, the Department recently completed a status

report on the species as part of the *Status of the Fisheries Report through 2008*, that recommended interim regulations be implemented under a precautionary principle until a stock assessment could be completed.

California Fish and Game Code Section 7090 requires the Commission, based upon the advice and recommendations of the Department, to encourage, manage, and regulate emerging fisheries. Consistent with the policies and criteria outlined in FGC §7090 and the Commission's *Policy on Emerging Fisheries*, the Department recommended the Commission designate the fishery for Kellet's whelk, as an emerging fishery. On April 7, 2011, based on the advice and input from the Department, a recommendation from the Commission's Marine Resources Committee, and public testimony the Commission designated the fishery for Kellet's whelk as an emerging fishery and directed staff to develop regulations that manage take in the fishery according to the guidelines set out by the California Marine Life Management Act.

### **Proposed Regulations**

The proposed regulations are intended to limit taking in the fishery until sufficient information and resources are available to develop and adopt a fishery management plan. For public notice purposes and to facilitate Commission discussion, three alternative regulatory approaches are being proposed. The alternatives have been designed to give the Commission the flexibility to implement the approaches independently or concurrently.

#### Option 1. Season where take is prohibited

Current regulations allow for the commercial and recreational take of Kellet's whelk to occur throughout the year. The proposed regulations would create a seasonal closure from [March 1 – May 1] through [May 31 – July 31] that would prohibit the commercial and recreational take of Kellet's whelk during that time period. The closed season is proposed to avoid harvest during months when mating and spawning takes place to protect reproduction.

The period of maximum closure (March 1 – July 31) represents close to 45% of historical annual commercial landings, while the minimum closure (May 1 – 31), represents approximately 9% of historical annual commercial landings. A seasonal closure that corresponds with the end of lobster season (first Wednesday after the 15<sup>th</sup> of March) through June 30 would protect reproductive individuals during a three and a half month period that accounts for approximately 25% of the historical annual commercial harvest.

Although this option is expected to protect adults during mating and reproduction, it is not designed to limit total annual landings. It is anticipated that there may be some level of effort shift from any closed period to the remaining open season to compensate for opportunities lost during a closed period. However, it is not

possible to quantify the effort as it will likely be influenced by many factors such as market demand and individual preference.

Pros:

- Protects species from fishing during periods of biological vulnerability
- Projected reduction in take of approximately 9 to 45% from current levels
- Straightforward to implement and enforce

Cons:

- May not reduce overall take if effort increases in other months
- Can disrupt markets when the product is no longer available year round
- May shift market demand to other species or other areas

#### Option 2. Total Allowable Catch

A total allowable catch (TAC) is often used to manage data poor species. Using this approach, the TAC is typically equal to the average catch from a time period during which there is no evidence of abundance decline, times a multiplier that is based on the estimated stock status. As the catch targets are often set at a precautionary level in the absence of data, they can serve as impetus for improved data collection and analysis.

The proposed regulations would create a TAC to cap the commercial landings of Kellet's whelk from the period from April 1 through March 31 of the following year. The TAC is proposed to be set at [86,000 to 173,000 pounds] which is based most conservatively on 50% of the most recent five year average landings and least conservatively on 100% of the most recent five year average landings (Figure 4).

When the TAC is met, or expected to be met based on anticipated landings, the fishery will be closed. The Department shall give not less than ten days notice of the fishery closure to all holders of a current and valid lobster operator permit or southern rock crab trap permit as well as any other individual who has landed Kellet's whelk within the previous five years via a notification letter, and to the public and Commission via a news release.

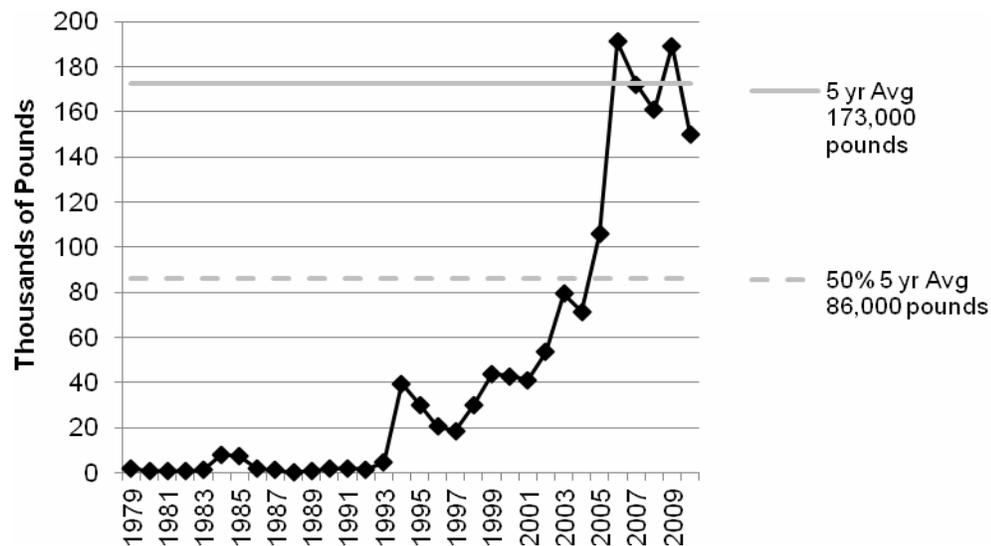


Figure 4. Kellet's whelk commercial landings from 1979 to 2010 and proposed range of Total Allowable Catch. Data source: DFG landing data.

A TAC would ensure the annual take of Kellet's whelk does not grow beyond a predefined target. However, given the limited information currently available for Kellet's whelk and lack of other data sources beyond landings data, it will be difficult to determine if the catch limit that is selected is adequate to meet conservation and fishery objectives. This option also creates the need for the Department to track catches against harvest limits and provide notice to affected parties.

Pros:

- Caps annual take at predetermined level and prevents fishery from expanding

Cons:

- Limited biological data to support a specific catch level
- Requires the Department to monitor landings and distribute notices

Option 3. Prohibit Commercial Take of Kellet's Whelk by Diving

Prohibiting diving for Kellet's whelk would help prevent the unrestricted growth of the fishery. Unlike the take of whelk incidentally in lobster and rock crab traps, there are no limits on the number of individuals who can take Kellet's whelk by diving. The proposed regulations would prohibit the commercial taking of Kellet's whelk by diving. This would limit the commercial taking of whelk to only those individuals who possess a current and valid lobster operator permit or southern rock crab trap permit. The lobster and southern rock crab trap fisheries are limited entry so there is a cap on the total number of individuals who could take Kellet's whelk.

Pros:

- Prevents selective fishing of aggregating individuals
- Simplifies management by a single gear type
- Straightforward to enforce
- Prevents uncontrolled expansion of fishery
- Impacts low number of individuals

Cons

- Selectively excludes a small number of individuals
- Little biological benefit if implemented in conjunction with a seasonal closure to protect aggregating individuals
- Does little to limit current take, diving accounted for less than 1% of take in 2010 and less than 3% over the past five years

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

Authority: Sections 200, 202, 205, 210, 220, 7090 and 8500 Fish and Game Code

Reference: Sections, 7090, 7850, 7857, 8140, 8250.5, 8254, 8284, 8500, 8603, 9000, 9001, 9010 and 9011, 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:

- (1) California Fish and Game Commission, June 24, 2010, Folsom
- (2) Marine Resources Committee, October 12, 2010, Santa Barbara, CA
- (3) Marine Resources Committee, February 15, 2011, Santa Barbara, CA
- (4) California Fish and Game Commission, April 7, 2011, Folsom, CA

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Development of a commercial fishing permit specific to Kellet's whelk was considered, but deemed infeasible at this time. Due to the small size and low value of the fishery, it would be cost prohibitive to develop and manage specific permits and gear types for this fishery. As markets continue to develop and more scientific information describing life history characteristics of the species become available, it may be reasonable to consider a specific permit at that time.

An alternative to limit take in the fishery is to impose a size limit to protect a portion of the breeding population from harvest. This is not desirable at this time due to the complexity of setting a size limit that would be appropriate for the species across its entire range as well as concerns from Law Enforcement Division and participants in the fishery over the viability of reliably measuring large numbers of whelk.

An alternative to limit the percentage of catch of Kellet's whelk caught incidentally in lobster and crab traps was considered. This alternative was dismissed due to difficulties setting an appropriate percentage, added enforcement burdens and the possibility that it could artificially increase the take of target species to allow for higher relative catch of Kellet's whelk.

The use of cumulative trip limits to limit take in the fishery was explored. This option was not deemed viable at this time due to difficulties setting the appropriate trip limits, allocation issues, and increased enforcement burdens.

A depth refugia to protect a portion of the population from harvest was examined, but dismissed due to difficulties related to implementation and enforcement.

(b) No Change Alternative:

If the proposed regulations are not adopted the fishery for Kellet's whelk will continue to be essentially unmanaged. What little life history information that is available indicates that this species is slow growing, long lived and forms spawning and egg laying aggregations making it vulnerable to overexploitation. The recent designation of southern rock crab traps as transferable permits allows for a relatively inexpensive point of entry for new participants wishing to retain whelk caught incidentally in crab traps. New participants, coupled with possible expanded markets could result in unsustainable levels of harvest of Kellet's whelk.

(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 or would be as effective as and less burdensome to the affected private persons than the proposed regulation.

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:

Option 1: Season where take is prohibited

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.

Implementation of a season where take is prohibited would allow individuals to continue to catch and sell Kelleys whelk during other parts of the year. As the majority of Kelleys whelk are caught incidentally in lobster and crab traps, this species does not make up the primary part of any individuals income. Any revenue lost during the closed season could be regained by additional effort during the open season. In addition, the implementation of a closed season may result in a price premium at certain times of the year during the open season, providing a possible positive economic impact. Finally, any short-term negative economic impacts are expected to be offset by the anticipated positive long-term economic returns that will result from a sustainable fishery.

Option 2: Total Allowable Catch

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.

A reduction in total annual catch would have a corresponding reduction in revenue. However, relative to other fisheries, the volume and value of Kellet's whelk are extremely low so the total estimated statewide economic impact is expected to be insignificant. In addition, any short-term negative economic impacts are expected to be offset by the anticipated positive long-term economic returns that will result from a sustainable fishery.

### Option 3: Prohibit Commercial Take of Kellet's Whelk by Diving

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.

In 2010, diving accounted for less than 1% of the total catch of Kellet's whelk, with a corresponding ex-vessel value of approximately \$1000. There are a very small number of individuals engaged in the dive fishery for Kellet's whelk (seven in 2010) so it is expected that a prohibition of diving would not have a significant economic impact.

- (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:

None

- (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 propose 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

## Informative Digest/Policy Statement Overview

Under existing law, Kellet's whelk, *Kelletia kelletii*, may be taken for commercial purposes by hand collecting while diving 1,000 feet beyond the low tide mark of any natural or constructed shoreline (FGC Section 8140, Title 14, CCR §123) and incidentally in lobster and rock crab traps (FGC Sections 8250.5 and 8284). There are no size limits, seasons or catch quotas when fishing for Kellet's whelk by diving or trapping. There is a recreational bag limit of 35 whelk per day, the standard recreational bag limit for species for which there is not a bag limit otherwise established and whelks cannot be taken in any tidepool or the areas between the high tide mark and 1,000 feet seaward and lateral to the low tide mark (Title 14, CCR §29.05).

California Fish and Game Code Section 7090 requires the Commission, based upon the advice and recommendations of the Department, to encourage, manage, and regulate emerging fisheries. Consistent with the policies and criteria outlined in FGC §7090 and the Commission's *Policy on Emerging Fisheries*, the Department recommended the Commission designate the fishery for Kellet's whelk, as an emerging fishery. On April 7, 2011, based on the advice and input from the Department, a recommendation the Commission's Marine Resources Committee and public testimony the Commission designated the fishery for Kellet's whelk as an emerging fishery. The proposed regulations are designed to manage take in the fishery according to the guidelines set out by the California Marine Life Management Act.

The proposed regulations would manage take in the fishery through three possible mechanisms that can be implemented independently or concurrently: a season where take is prohibited; a total allowable catch (TAC); and a restriction on the method of take.

### Option 1: Season where take is prohibited

The proposed regulations would create a seasonal closure from [March 1 – May 1] through [May 31 – July 31] that would prohibit the commercial and recreational take of Kellet's whelk during that time period.

### Option 2: Total Allowable Catch

The proposed regulations would create a total allowable catch (TAC) to cap the commercial landings of Kellet's whelk from the period from April 1 through March 31 of the following year. The TAC is proposed to be set at [86,000 to 173,000 pounds] which is based most conservatively on 50% of the most recent five year average landings and least conservatively on 100% of the most recent five year average landings.

When the TAC is met, or expected to be met based on anticipated landings, the fishery will be closed. The Department shall give not less than ten days notice of the fishery closure to all holders of a current and valid lobster operator permit or southern rock crab trap as well as any other individual who has landed Kellet's whelk within the previous

five years via a notification letter, and to the public and Commission via a news release.

### Option 3: Prohibit Commercial Take of Kellet's whelk by Diving

The proposed regulations would prohibit the commercial taking of Kellet's whelk by diving. Unlike the take of whelk incidentally in lobster and rock crab traps, there are no limits on the number of individuals who can take Kellets whelk by diving. Prohibiting diving for Kellet's whelk would help prevent the unrestricted growth of individuals participating in the fishery.