

**COMMISSIONERS**

**Daniel W. Richards**, President  
Upland  
**Michael Sutton**, Vice President  
Monterey  
**Jim Kellogg**, Member  
Discovery Bay  
**Richard Rogers**, Member  
Santa Barbara  
**Jack Baylis**, Member  
Los Angeles

**EDMUND G. BROWN, JR.**



Governor

**Sonke Mastrup**  
EXECUTIVE DIRECTOR  
1416 Ninth Street, Room 1320  
Box 944209  
Sacramento, CA 94244-2090  
(916) 653-4899  
(916) 653-5040 Fax  
fgc@fgc.ca.gov

STATE OF CALIFORNIA

**Fish and Game Commission**

February 8, 2012

TO ALL AFFECTED AND INTERESTED PARTIES:

This is to provide you with a copy of the notice of proposed emergency regulatory action relating to recreational take of abalone. The objective of this regulation is to repeal the emergency closure of the abalone fishery along Sonoma County before April 1, 2012, the historic opening day of the abalone fishery.

The Commission adopted this emergency regulation at its February 2, 2012 meeting. It is anticipated that the emergency regulation will be filed with the Office of Administrative Law (OAL) on or about February 15, 2012.

Sincerely,

Sherrie Fonbuena  
Associate Governmental Program Analyst

Attachments

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

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 210, 220, 240, 5521 and 7149.8 of the Fish and Game Code (FGC) and to implement, interpret or make specific sections 200, 202, 205, 220, 5521, 7145 and 7149.8 of said Code, re-adopted Section 29.15, Title 14, California Code of Regulations (CCR), relating to the recreational take of abalone. **The objective of this re-adoption is to repeal the closure of the abalone fishery along Sonoma County before April 1, 2012, the historic opening day of the abalone fishery.**

**Informative Digest/Policy Statement Overview**

**Existing Laws and Regulations directly related to the proposed action**

Under existing regulations (Section 29.15, Title 14, CCR), red abalone may only be taken for recreational purposes north of a line drawn due west magnetic from the center of the mouth of San Francisco Bay. Current regulations also specify: season, hours, daily limits, special gear provisions, measuring devices, abalone report card requirements, and sizes. There are no existing comparable federal regulations or statutes.

**Effect of the Regulatory Action**

The proposed emergency regulations will prohibit the take of abalone along the coast of Sonoma County **until March 30, 2012.**

**Policy Statement Overview**

The Department of Fish and Game (DFG) has confirmed a significant die-off of red abalone along the coast of Sonoma County. The cause has been determined to be an unusual red-tide event that occurred during late August and early September, 2011, although the specific mechanism that is responsible for the abalone mortality is still under investigation. Fishery regulations currently in place were not designed to provide conservation safeguards for this unexpectedly large increase in natural mortality. Furthermore, surviving abalone may have an intrinsic resistance to the underlying cause of this mortality, and it is therefore necessary to provide additional protection at this time so that the surviving animals will have an increased opportunity to reproduce and rebuild the population with potentially resistant offspring. Consequently, the Commission determined that abalone fishing must be closed along Sonoma County to protect the abalone resource.

**Benefits of the Regulation**

The original emergency regulation closed the recreational abalone season along the Sonoma County coast in response to a die-off as a result of an unusual red-tide event. The closure was intended to last through the remainder of the 2011 season. Repealing the special closure prior to the historic opening day of the abalone season allows for appropriate utilization of the abalone resource.

**Section 240 Finding**

Pursuant to the authority vested in it by FGC Section 240 and for the reasons set forth in the attached "Statement of Emergency Action," the Commission expressly finds that the adoption of

this regulation is necessary for the immediate conservation, preservation, or protection of fish and wildlife resources. The Commission specifically finds that the adoption of this regulation is necessary for the immediate conservation, preservation, or protection of the abalone resource.

### **Public Comments on Proposed Emergency Regulations**

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

In order to be considered, public comments on proposed emergency regulations must be submitted in writing to the Office of Administrative Law (OAL), 300 Capitol Mall, Room 1250, Sacramento, CA 95814; AND to the Fish and Game Commission, 1416 Ninth Street, Room 1320, Sacramento, CA 95814, or via fax to (916) 653-5040 or via e-mail to [fgc@fgc.ca.gov](mailto:fgc@fgc.ca.gov). Comments must identify the emergency topic and may address the finding of emergency, the standards set forth in sections 11346.1 and 11349.1 of the Government Code and Section 240 of the Fish and Game Code. Comments must be received within five calendar days of filing of the emergency regulations. Please refer to OAL's website ([www.oal.ca.gov](http://www.oal.ca.gov)) to determine the date on which the regulations are filed with OAL.

### **Impact of Regulatory Action**

The potential for significant statewide adverse economic impacts that might result from the emergency regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Costs/Savings in Federal Funding to the State:

The Commission has determined that the amendment of Section 29.15, Title 14, of the California Code of Regulations (CCR), as an emergency regulation will not result in costs or savings in federal funding to the State.

(b) Nondiscretionary Costs/Savings to Local Agencies:

The Commission has determined that amendment of Section 29.15, Title 14, CCR, as an emergency regulation will not result in any costs or savings to local agencies.

(c) Programs Mandated on Local Agencies or School Districts:

The Commission has determined that the amendment of Section 29.15, Title 14, CCR, as an emergency regulation does not impose a mandate on local agencies or school districts.

(d) 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; and

(e) Effect on Housing Costs:

The Commission has determined that the amendment of Section 29.15, Title 14, CCR as an emergency regulation will not result in any cost to any local agency or school district for which Government Code sections 17500 through 17630 require reimbursement and will not affect housing costs.

(f) Costs or Savings to State Agencies

The Commission has determined that amendment of Section 29.15, Title 14, CCR as an emergency regulation will not change any cost or savings to state agencies.

Effect on Small Business

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

Consideration of Alternatives

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 the affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Sonke Mastrup  
Executive Director

Dated: February 8, 2012