

CALIFORNIA FISH AND GAME COMMISSION
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION
FOR RE-ADOPTION OF EMERGENCY REGULATION

Emergency Action to
Re-adopt Amendments to Section 29.45,
Title 14, California Code of Regulations
Re: Re-adoption of Emergency Closure of Razor Clam Fishery
Due to Elevated Levels of Domoic Acid

I. Statement of Facts Constituting the Need for Emergency Regulatory Action

The Fish and Game Commission (Commission) filed an emergency rulemaking with the Office of Administrative Law (OAL) on April 25, 2016, after samples of razor clams were found to contain high levels of domoic acid. The emergency rulemaking closed the recreational razor clam fishery in Del Norte and Humboldt counties. The emergency regulation was approved by OAL, filed with the Secretary of State, and effective on April 26, 2016. The emergency regulation will expire on October 25, 2016.

The Office of Environmental Health Hazard Assessment (OEHHA), in cooperation with the Department of Fish and Wildlife (Department), has continued to monitor domoic acid levels in razor clams along the California coast since the emergency regulation was filed. Past history with such situations suggested that the emergency would resolve itself within the original 180-day effective period of the emergency regulation as domoic acid levels naturally subsided. However, OEHHA has not yet notified the Commission that domoic acid levels in razor clams have returned to below the federal action level (20 parts per million). Therefore, consuming razor clams from Del Norte and Humboldt counties continues to pose a significant risk to public health as determined by the Director of OEHHA, in consultation with the Director of CDPH. Thus, re-adopting the emergency closure for a period of 90 days beyond the initial 180-day period is necessary for the preservation of public health and safety.

II. Identification of Reports or Documents Supporting Factual Emergency

The Commission relied upon the following documents in proposing this emergency rulemaking action:

- California Department of Public Health, "CDPH Reminds of Warning on Razor Clams from Humboldt and Del Norte Counties," News Release, April 20, 2016

- California Office of Environmental Health Hazard Assessment, “Domoic Acid Threat to Public Health from Razor Clams in Del Norte and Humboldt Counties,” Memo, April 20, 2016
- Razor Clam Update email from Gregg Langlois, California Department of Public Health, dated July 29, 2016
- Razor Clam Update email from Joe Christen, California Department of Public Health, dated September 6, 2016

III. Regulatory Proposal

The proposed regulation would prohibit recreational take and possession of razor clams in Del Norte and Humboldt counties. Closure of the fishery shall remain in effect until the director of OEHHA, in consultation with the director of CDPH, determines that domoic acid levels in razor clams no longer pose a significant risk to public health and no longer recommends the fishery be closed.

The Department shall maintain a list of closed ocean waters of the state and update that list on Wednesday of each week by 1:00 pm. It shall be the responsibility of any person taking razor clams to call the Department’s hotline at or visit the Department’s website at to obtain the current status of any ocean water.

IV. 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) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (b) Nondiscretionary Costs/Savings to Local Agencies:

None.

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

None.

- (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:

None.

(e) Effect on Housing Costs:

None.

V. Re-adoption Criteria

Pursuant to Government Code Section 11346.1(h), the text of a re-adopted regulation must be the “same or substantially equivalent” to the text of the original emergency regulation. The language for the re-adopted regulatory amendment is the same as the language of the original emergency regulation.

In addition, Government Code Section 11346.1(h) specifies that the emergency rulemaking agency must demonstrate that it is making “substantial progress and has proceeded with due diligence” to comply with standard rulemaking provisions. At its October 19-20, 2016, meeting, the Commission will receive an update on testing and sampling levels of domoic acid. Past history with such situations suggested that the emergency would resolve itself within the original 180 days as domoic acid levels naturally subsided. However, at its October 19-20, 2016, meeting, the Commission is expected to determine that an emergency situation still exists and re-adopt the emergency closure for a period of 90 days beyond the initial 180-day period as it is necessary for the preservation of public health and safety. Given this unique situation, a state interagency task force that includes the Commission has been created to proactively address harmful algal blooms that result in high levels of domoic acid and to identify solutions for more quickly addressing public health and safety.

VI. Authority and Reference

The Commission proposes this emergency action pursuant to the authority vested by Sections 200, 202, 205, 220, and 240, of the Fish and Game Code and to implement, interpret, or make specific Sections 200, 202, 205, 206, 220, and 240, of said Code.

VII. Section 240 Finding

Pursuant to Section 240 of the Fish and Game Code, the Commission finds that the adoption of this regulation is necessary for the immediate protection of public health that may result from elevated levels of domoic acid detected in samples of razor clams.

Informative Digest (Plain English Overview)

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Proposed Regulatory Action: The proposed regulation would prohibit recreational take and possession of razor clams in Del Norte and Humboldt counties. Closure of the fishery shall remain in effect until the director of OEHHA, in consultation with the director of CDPH, determines that domoic acid levels in razor clams no longer pose a significant risk to public health and no longer recommends the fishery be closed.

The Department shall maintain a list of closed ocean waters of the state and update that list on Wednesday of each week by 1:00 pm. It shall be the responsibility of any person taking razor clams to call the Department's hotline or visit to the Department's website to obtain the current status of any ocean water.

Benefits: The proposed regulation will protect public health and safety by prohibiting the take and possession of razor clams containing elevated levels of domoic acid.

Evaluation of Incompatibility with Existing Regulations: The proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Legislature has delegated authority to the Commission to promulgate sport fishing regulations (Sections 200, 202, 205, 220, and 240, Fish and Game Code).