

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Add Section 128  
Title 14, California Code of Regulations  
Re: Sea Cucumber Commercial Fishery Regulations

- I. Date of Initial Statement of Reasons: July 11, 2017
- II. Date of Final Statement of Reasons: October 12, 2017
- III. Dates and Locations of Scheduled Hearings:

- (a) Notice Hearing: Date: June 22, 2017  
Location: Smith River, CA
- (b) Discussion Hearing: Date: August 16, 2017  
Location: Sacramento, CA
- (c) Adoption Hearing: Date: October 12, 2017  
Location: Atascadero, CA

- IV. Update:

At its October 12, 2017 meeting, the California Fish and Game Commission (Commission) adopted the proposed regulations, including seasonal closure Option 2, as described in the July 11, 2017, Initial Statement of Reasons. The adopted regulations clarify the logbook requirements of the commercial sea cucumber dive fishery and establish a seasonal closure prohibiting the take of warty sea cucumber from March 1- June 14.

No modifications were made to the originally proposed regulatory language in the Initial Statement of Reasons.

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

All written and verbal comments received by the Commission on the proposed regulatory changes are summarized and responded to the attached Table 1 – Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Action and Reasons for Rejecting Those Considerations.

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 Regulatory Action:

Total Allowable Catch (TAC): A cap on overall harvest was considered and rejected. This alternative is not deemed viable at this time because historical landings data is used as the basis for determining a sustainable TAC, but such data is not available. Without precise landing data, the Department cannot effectively determine a sustainable quota.

(b) No Change Alternative:

Under the no change alternative, the commercial take of warty sea cucumber during the spawning season will continue to occur without any restriction on take. Research and fishery analyses detail concerning trends regarding the warty sea cucumber commercial fishery and indicate that the continued unregulated harvesting of warty sea cucumber during their spawning period poses a significant risk to the sustainability of this fishery. The intent of the proposed action is the improved management of the warty sea cucumber resource and fishery and a step towards the long-term sustainability of the resource and viability of the commercial fishery in accordance with the goals and objectives of the Marine Life Management Act and provisions of subsection 8405.3(a) of the Fish and Game Code.

(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 adopted regulation, or would be more

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

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 because harvest quantities by California permittees are not anticipated to fall and a commercial warty sea cucumber fishery only exists in the State of California and there are no like products that currently compete as substitutes for warty sea cucumber. While no other state has a commercial fishery that poses competition, Mexico does have a warty sea cucumber fishery. However, Mexico's fishery has been exhibiting similar signs of decline. In light of the fact that other sea cucumber stocks in the world have been overharvested, it is critical to maintain a sustainable sea cucumber fishery in California.

(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 anticipates limited short-term negative impacts from a curtailed season length on the creation or elimination of jobs within the State, with the potential for the direct, indirect, and induced loss of 17 to 21 jobs that are directly or indirectly linked to the warty sea cucumber fishery statewide.

The proposed action is not anticipated to exert significant impact on the creation of new businesses, the elimination of existing businesses, or the expansion of businesses in California because the proposed action will not constitute a substantial year-round drop in fishery activity.

The Commission anticipates generalized benefits to the health and welfare of California residents through the improved reporting and better

monitoring of the fishery.

No impacts to worker safety are anticipated.

The State's environment should benefit by the improved management of the warty sea cucumber resource with the goal of creating a more sustainable sea cucumber dive fishery, which would benefit existing businesses in the long term.

(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. The annual income from sea cucumber harvesting is not likely to change for individuals since the regulation only changes the season dates. The proposal does not impose additional compliance costs such as gear, fees, etc. The individuals comprising the sea cucumber fishery support the changes in order to sustain the fishery for future years.

(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.

## Updated Informative Digest/Policy Statement Overview

The proposed addition of new regulations in Section 128, Title 14, California Code of Regulations (CCR), will create a seasonal closure that would prohibit all commercial take of warty sea cucumber during a significant portion of the spawning season and prohibit the possession aboard commercial vessels and landings of warty sea cucumbers during the closed season.

Current laws governing commercial harvest of sea cucumber in California are permissive with only permits and permitting provisions for the sea cucumber fishery (Fish and Game Code (FGC) Section 8405, et seq.). There are no seasons, size limits, catch limits or limits on dive gear usage (e.g., SCUBA and surface supplied air) when commercially fishing for sea cucumber by diving or trawling.

Under FGC subsection 8405.3(a), the California Fish and Game Commission (Commission) has the authority to adopt new regulations that are reasonably necessary to protect the sea cucumber resource, to assure a sustainable sea cucumber fishery, or to enhance enforcement activities. Consistent with the policy and criteria outlined in FGC subsection 8405.3(a), the Department of Fish and Wildlife (Department) recommends that the Commission add Section 128, Title 14 CCR, to establish a closed season for warty sea cucumber. The proposed regulations would promote a sustainable warty sea cucumber fishery through the protection of the spawning population.

Three seasonal closure options are provided for the Commission's consideration,

- **Option 1:** April 1 to June 30; or
- **Option 2:** March 1 to June 14; or
- **Option 3:** January 1 to June 14.

The proposed regulations would also clarify the existing recordkeeping obligations for commercial sea cucumber dive activities (FGC subsection 8405.1(c)) by referencing Section 120.7, Title 14, CCR, which incorporates the Department's Commercial Dive Fishing Log form (DFG 120.7) by reference. A similar regulation currently exists for recordkeeping of commercial trawling activities for sea cucumber in Section 176, Title 14, CCR.

### Benefits of the Regulations

The proposed closed season for the commercial warty sea cucumber fishery would protect warty sea cucumber spawning aggregations from overexploitation and promote the long-term sustainability of the fishery resource. The recordkeeping requirements would provide clarification and improve compliance with and enforcement of the regulations.

## Consistency and Compatibility with Existing Regulations

The proposed regulations are consistent with sections 120, 120.7, 123, 189 and 632, Title 14, CCR. Commission staff has searched the CCR and found no other regulations that address the commercial take of sea cucumber and therefore finds that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Legislature has delegated authority to the Commission to adopt regulations necessary to protect the sea cucumber resource and to assure a sustainable sea cucumber fishery (FGC subsection 8405.3(a)). No other state agency has the authority to regulate the commercial take of warty sea cucumber.

### **UPDATE:**

**At its October 12, 2017 meeting, the Commission adopted the proposed regulations, including seasonal closure Option 2, as described in the July 11, 2017, Initial Statement of Reasons. The adopted regulations clarify the logbook requirements of the commercial sea cucumber dive fishery and establish a seasonal closure prohibiting the take of warty sea cucumber from March 1- June 14.**