

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

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Section 8405.3 of the Fish and Game Code and to implement, interpret or make specific Sections 8026, 8405.1, 8405.3 and 8500 of said Code, proposes to add Section 128, Title 14, California Code of Regulations (CCR), relating to commercial taking of sea cucumber.

Informative Digest/Policy Statement Overview

The proposed addition of new regulations in Section 128, Title 14, 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 Commission has the authority to adopt 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,

- April 1 to June 30; or
- March 1 to June 14; or
- 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.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held to be held in the Resources Building Auditorium, First Floor, 1416 Ninth Street, Sacramento, California, on Wednesday, August 16, 2017, at 8:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the SpringHill Suites by Marriott, 900 El Camino Real, Atascadero, California, on Thursday, October 12, 2017, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before September 28, 2017, at the address given below, or by email to FGC@fgc.ca.gov. **Written comments mailed, or emailed to the Commission office, must be received before 12:00 noon on October 6, 2017.** All comments must be received no later than October 12, 2017, at the hearing in Atascadero, California. If you would like copies of any modifications to this proposal, please include your name and mailing address.

Availability of Documents

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout format can be accessed through our website at www.fgc.ca.gov. The regulations as well as all related documents upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Valerie Termini, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Valerie Termini or Sherrie Fonbuena at the preceding address or phone number.

Carlos Mireles, Department of Fish and Wildlife, phone (805) 568-1221, email Carlos.Mireles@wildlife.ca.gov, has been designated to respond to questions on the substance of the proposed regulations.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Assessment

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 Business, 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.

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

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated: July 25, 2017

Valerie Termini
Executive Director