

State of California

M e m o r a n d u m

Date: September 24, 2007

To: John Carlson, Jr.
Executive Director
Fish and Game Commission

From: **JOHN MCCAMMAN, Acting Director**
Department of Fish and Game

Subject: Submission of Initial Statement of Reasons Re: Sport Fishing Report Card and Tagging Requirements

At the Commission's August meeting, the Department presented a proposal to revamp and expand sport fishing report card and tagging requirements for five fisheries of particular importance or concern. Report cards provide information on recreational catch and fishing activity (effort) needed for management, and help improve compliance with existing bag limits. They can also reduce the potential for poaching for species of high commercial value. The Initial Statement of Reasons supporting the proposed regulatory changes is attached.

To highlight the proposal, report cards would continue to be required for individuals fishing for or taking steelhead, sturgeon, abalone, and salmon, although the salmon card program would be modified so that the requirement would apply only in the Klamath-Trinity watershed. A new report card program would be instituted for spiny lobster, and a new tagging requirement would be established for abalone, similar to the current sturgeon tagging requirement, to improve compliance with the annual bag limit. Report cards would be required for all fishermen fishing for or taking these five species regardless of age, when fishing on Free Fishing Days, and when fishing from a public pier.

At the August meeting, the Department indicated it was working to finalize the proposed regulations relative to the new abalone tagging program. Although the existing sturgeon program provides a model for the proposed new abalone tagging regulations, there are unique differences between the two fisheries. Because abalone are taken by divers, rather than by anglers using hooks and lines, there is a need for the rules in each program to differ somewhat.

For sturgeon, current regulations require that the fish be tagged immediately after it is taken and retained. This requirement is needed to make the card and tag system work as intended – so that any fish that is kept is properly tagged and the catch is logged on the card as being one of the three fish that the angler is authorized to take in that year. Without this “immediacy” requirement, anglers could wait until they are checked by an officer before affixing one of their three tags to the fish; thereby undermining the major purpose of the tag program – to ensure compliance with the annual bag limit of three fish per person.

However, because abalone divers are operating in the water, there are limitations on how to impose this “immediacy” requirement. Some divers utilize small vessels in their activities, such as kayaks or float tubes, while others dive from shore or anchored vessels. Without question, abalone divers need to be able to physically get out of the water before they are required to tag and record their catch. However, the manner in which this regulation is constructed is critical to the success of the program, because if the rule is not specific about when the tags must be affixed and the catch recorded, varying interpretations of the same rule are likely to arise.

As a result, the language proposed by the Department would require an abalone diver to tag and record his or her catch immediately after exiting the water, whether back onto shore or onto a boat. Cardholders shall not wait to return to their vehicle, beach site or other location to tag any abalone in possession.

However, the Department is aware that this bright-line rule could potentially be difficult to comply with in the case of divers who exit the water onto a small non-motorized craft such as a kayak, where, under some circumstances, the platform is unstable. In such a situation, tagging an abalone and recording information with a pen onto a report card potentially might prove difficult. At the same time, allowing an exception could result in reduced effectiveness of the card and tag program if the rule is interpreted too broadly, ultimately allowing abalone taken in the fishery to go untagged and unrecorded.

In order to allow the Commission to consider public comments or testimony presented on this issue at the discussion and adoption hearings, the Department has prepared two regulatory alternatives for its consideration, and requests that it select one of these two options:

OPTION 1: Would provide NO EXCEPTION for users of non-motorized vessels.

OPTION 2: PROVIDES AN EXCEPTION for users of non-motorized vessels as follows: Cardholders who dive from a non-motorized vessel such as a kayak that is in the water may wait until immediately after disembarking from the non-motorized vessel to tag and record any abalone in possession, but shall not transfer any abalone from his or her immediate possession unless they are first tagged and recorded on the report card.

If you have any questions or need additional information, please contact Deputy Director Sonke Mastrup by telephone at (916) 653-4673.

Attachment

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