

State of California
California Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814
TITLE 14, CALIFORNIA CODE OF REGULATIONS
AMEND SECTIONS 228 and 228.5
SUCTION DREDGING
FINAL STATEMENT OF REASONS

Introduction and Relationship to Initial Statement of Reasons

This Final Statement of Reasons (FSOR) updates the Initial Statement of Reasons (ISOR) provided to the public in March 2011. Pursuant to Government Code section 11346.9(d) and to avoid redundancy in the rulemaking file, the California Department of Fish & Game (Department or CDFG) satisfies the Administrative Procedure Act's (APA) (Gov. Code, § 11340 et seq.) requirements for an FSOR by incorporating by reference the relevant statements previously set forth in documents required by Government Code Sections 11346.2 to 11346.5, inclusive, and focuses the FSOR's content on those issues that require updates to the ISOR.

Specific Purpose of the Final Regulation as Adopted

As set forth in the ISOR, CDFG proposes to implement a Suction Dredge Permitting Program (Program) for suction dredging activities for the purpose of, and consistent with the requirements of Fish and Game Code Section 5653 et seq. and the December 2006 Alameda County Superior Court Order (pursuant to *Karuk Tribe of California et al. v. California Department of Fish and Game* [Super. Ct. of Alameda County, 2005, no. RG05211597]) by amending the regulations of Title 14 of the California Code of Regulations, Sections 228 and 228.5.

The Department's decision to adopt updated regulations and certify the 2012 EIR¹ marks an important milestone. Although currently prohibited by statute through June 30, 2016, the use of vacuum and suction dredge equipment for instream suction dredge mining is rooted in California history. So is related controversy, certainly over recent decades.

¹ For purposes of this FSOR, both the Draft Subsequent Environmental Impact Report (DSEIR) (State Clearinghouse No. 2009112005) and the Final Subsequent Environmental Impact Report (FSEIR) constitute the Department's "2012 EIR" for purposes of CDFG's compliance with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.).

The Department is the only California state agency with explicit statutory authority to regulate suction dredge mining. (Fish & G. Code, § 5653 et seq.) Although the Fish and Game Code includes a general prohibition on the use of vacuum or suction dredge equipment in any river, stream, or lake, the same provisions directs the Department to issue related permits in mandatory terms if suction dredging consistent with regulations adopted by the Department will not be deleterious to fish. (*Id.*, § 5653, subds. (a), (b); § 5653.9.) The Department's explicit substantive legal authority is limited, however, to a subset of the impacts associated with the activity. Absent comprehensive regulatory reform governing suction dredge mining in California generally, and as discussed more fully below, the Department is still charged by existing law and, in the present case, by court order to complete the underlying environmental review and rulemaking effort.

The Department's overarching interest in fulfilling its current legal obligations is the conservation of California's fish and wildlife resources. Established by statute, the Department serves by the same authority as the state's trustee agency for California fish and wildlife. (*Id.*, §§ 700, 711.7, subd. (a), 1802; Pub. Resources Code, § 21070; CEQA Guidelines, § 15386, subd. (a).) Consistent with its trustee mandate, the Department's mission is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public.

The trust status of California's fish and wildlife resources is rooted in the common law Public Trust Doctrine. As a state agency created by statute proposing to adopt updated regulations governing suction dredging, however, the Department must do so consistent with and subject to the controlling legal authority set forth in Fish and Game Code section 5653, subdivision (b).

The Department takes its final action in the present case to implement a Suction Dredge Permitting Program, for the purpose of and consistent with DFG's existing obligations under court order, CEQA, the APA, and the Fish and Game Code. It does so at the same time with a strong sense that existing state law governing suction dredge mining is ripe for comprehensive reform. In fulfilling its legal obligations, and doing so with the generous support and assistance of the California State Water Resources Control Board, the Department has made its best effort to find out and disclose all that it reasonably can about the environmental effects associated with suction dredging. The 2012 EIR, in fact, is the most comprehensive scientific analysis of suction dredging's impacts prepared in California to date. The Department anticipates its effort and related analysis will advance the related conversations among the myriad stakeholder groups involved in the issues.

New Technical and Empirical Studies, Reports, or Documents

CDFG's rulemaking does not rely upon any data or technical, theoretical or empirical study, report, or similar document that was not identified in the ISOR, or that was not identified or made available for public review prior to the close of the public comment period. The ISOR described CDFG's preparation of a DSEIR for the program to comply with the 2006 Court Order and to meet its broader obligations of environmental protection with respect to its existing suction dredge mining permitting program. The draft SEIR was prepared in compliance with CEQA and the State CEQA Guidelines (14 California Code of Regulations [CCR] 15000 et seq.) to provide the public, responsible agencies, and trustee agencies with information about the potential environmental effects of implementing the Program, as updated pursuant to the current rulemaking effort under the Administrative Procedure Act (APA)(Gov. Code, § 11340 et seq.).

The DSEIR and related review under CEQA analyzed the new significant and substantially more severe environmental impacts that could occur under the 1994 permitting program that were not previously addressed by CDFG in the 1994 EIR. For the purposes of the DSEIR, the Program consists of proposed amendments to CDFG's previous regulations governing suction dredge mining throughout California and the related suction dredging that would occur consistent with those amendments. (See generally Cal. Code Regs., tit. 14, § 228 et seq.)

Leading up to the DSEIR, CDFG conducted extensive outreach and investigation. This outreach included but was not limited to scoping meetings, a review of the scientific literature, the development of a Public Advisory Committee (PAC), conducting a survey of suction dredge permit holders, as well as preparation of a socioeconomic report. Given the depth and breadth of this research that provided the basis for the DSEIR, no new data, technical, theoretical, empirical, or similar report has been relied upon in proposing the final regulation.

Sufficiently Related Changes to the Originally Proposed Regulations

The final regulation as adopted consists of: (1) revised regulations that were released by the Department on February 17, 2012 and that were substantially related to the regulation amendments originally proposed in March 2011; and (2) minor nonsubstantial corrections to typographical errors (see Table 1 below).

Table 1
Errata of Minor Corrections

COUNTY	WATER	DESCRIPTION	CHANGE MADE	REASON
Placer	American River, Middle Fork	Mainstem and all tributaries from North Fork American River upstream, unless otherwise noted	Added	Inadvertently left out. This was added to conform to the same reach of river in El Dorado so that there would be no confusion about the regulation. Change has no effect on fish.
Placer	American River, Middle Fork	Mainstem upstream from Oxbox Reservoir to Anderson Dam	Corrected to indicate only the reach upstream from Oxbow Reservoir	Avoids having two different conflicting dredge seasons on the same river reach. Change has no effect on fish.
Riverside	Multiple Waterbodies	All shoreline pools and irrigation drains within one mile of the Salton Sea	Change Waterbodies to Waters	Consistent use of term. Change has no effect on fish.
San Diego	Christianitos Creek	Mainstem	Delete “h” in Cristianitos. Delete reference to Gabino Creek upstream	Correct spelling of Cristianitoes Creek. Gabino Creek is not in San Diego County. Change has no effect on fish.
San Diego	San Felipe Creek	Mainstem	Delete remainder of description	Avoids confusion because there are two SR-78 crossings. Change has no effect on fish.
Ventura	Hopper Creek	Mainstem	Delete entry	Redundant. No effect on fish.

With respect to the February 17, 2012 revisions, DFG provided extensive public notice and in so doing complied with Section 44 of Title 1 of the California Code of Regulations, as well as Government Code sections 11346.8(c) (15 day notice) and 11340.85 (electronic communication).

Specifically, a 15 day notice period began on Friday, February 17, 2012 and ended at 5:00 p.m. on Monday, March 5, 2012. The extensive public notice included, as of February 17, 2012:

- On February 10, 2012, advance notice that the revisions would be forthcoming specifically in an e-mail update to every individual currently registered to receive electronic updates from the Department regarding the ongoing Suction Dredge Program environmental review and rulemaking effort;
- A February 17, 2012 transmission via e-mail of a copy of the revisions to the registrant group;
- Publication of notice in the California Regulatory Notice Register (Cal. Reg. Notice Register 2012, No. 7-Z, p. 174);
- Issuance of a press release noting that copies could be made available upon request at 530-225-2275 and related requests could be submitted to DFG via e-mail at dfgsuctiondredge@dfg.ca.gov;
- Posting all related documents on the “Suction Dredge” portion of DFG’s web page; and
- Providing copies of the revisions to the proposed amendments for public review at the following DFG offices:

601 Locust Street, Redding
1701 Nimbus Road, Suite A, Rancho Cordova
1807 13th Street, Suite 104, Office of Communications, Sacramento
7329 Silverado Trail, Napa
1234 E. Shaw Avenue, Fresno
3883 Ruffin Road, San Diego
4665 Lampson Avenue, Suite J, Los Alamitos
3602 Inland Empire Blvd., Suite C-220, Ontario
20 Lower Ragsdale Drive, Suite 100, Monterey

The Department also highlighted the possibility of these revisions in August and October 2011, targeting February 2012 specifically, in status reports filed and otherwise available to the public in Alameda and San Bernardino County Superior Courts. The noticed revisions clearly indicated changes, using double strikeouts and double underlining and including a written description of the method used on the first page of the changed text.

The Department received more than 500 comments on the proposed regulations. From February 17 to March 5, 2012 (i.e., the 15 day review period for the revised regulations), the Department received approximately 600 email comments, evenly split between individual responses and form letters and more than 100 letters through regular mail. Some of these letters include extensive comments totaling more than 40 pages. This response indicates that the public not only had the opportunity to review on the proposed regulations, but also took full advantage of that opportunity.

Necessity

The Department is the only California state agency with explicit statutory authority to regulate suction dredge mining. (Fish & G. Code, § 5653 et seq.) Although the Fish and Game Code includes a general prohibition on the use of vacuum or suction dredge equipment in any river, stream, or lake, the same provision directs the Department to issue related permits in mandatory terms if suction dredging consistent with regulations adopted by the Department will not be deleterious to fish. (Id., §§ 5653, subds. (a)-(b), 5653.9.) The Department's explicit substantive legal authority for purposes of its suction dredge implementing regulations is limited, in this respect, to *deleterious effects to fish*. (Id., § 45 (fish defined).) The effects of suction dredging on fish, however, are only a subset of the potentially significant environmental impacts caused by the activity.

Fish and Game Code section 5653.9 also directs the Department to adopt those regulations in compliance with CEQA and the APA, which is happening here. (See also Fish & G. Code, § 5653.1, subd. (a).) In the same vein, is the order and consent judgment issued by the Alameda County Superior Court in the Karuk litigation in December 2006. That order, entered by the Superior Court on December 20, 2006, specifically directs the Department to conduct "further environmental review" of its suction dredge permitting program under the 1994 regulations and, if necessary, to conduct related rulemaking under the APA. The December 2006 Order also directs the Department to complete its related effort by June 2008. The Department's completion of its current rulemaking would thus render the Department consistent with its related legal obligations under both the statute and court order.

The Department's legal obligation to complete this rulemaking is also highlighted by comments from the current and former governors. In vetoing a related portion of Senate Bill (SB) 87, the California 2011 Budget Act, Governor Brown objected to a related provision that would have prohibited the Department from expending public funds to complete this effort. Governor Brown did so underscoring the proposed funding restriction conflicted with the Department's legal obligation to complete the environmental review effort required by court order. (Stats. 2011, ch. 33, p. 4, Item 3600-001-00001, Provision 3.)

Former Governor Schwarzenegger acknowledged the same obligation and the importance of completing the effort in October 2007. The former governor did so vetoing Assembly Bill (AB) 1032 (Wolk), which would have provided the Department with related funding, but also imposed various restrictions on suction dredging while the Department completed the required environmental review. In vetoing the bill, which itself specifically acknowledged the Department's obligations under the court order, Governor Schwarzenegger commented he was doing so because the required scientific environmental review should necessarily precede any such restrictions or other changes to the Department's 1994 regulations. (Assem. Bill No. 1032 (2007-2008 Reg. Sess.), Governor's Veto Message, October 13, 2007.)

In August 2009, former Governor Schwarzenegger also signed SB 670 (Wiggins). In so doing, the State of California enacted the existing statewide moratorium on suction dredging as an initial matter. (Stats. 2009, ch. 62, § 1, adding former Fish & G. Code, § 5653.1.) As enrolled and signed by the former governor, SB 670 specifically acknowledges and codifies the Department's obligations under the December 2006 Order in the Karuk litigation. Governor Brown noted the same obligations signing AB 120 in July 2011, affirming the Department's obligation to complete the current effort. (Stats. 2011, ch. 133, § 6, amending former Fish & G. Code, § 5653.1.)

In 2011, the Legislature enacted AB 120, amending Fish & Game Code section 5653.1. (Stats. 2011, ch. 133, § 6, amending Fish & G. Code, § 5653.1.) AB 120 identifies five substantive conditions that the Department would need to certify to the Secretary of State for the existing statutory moratorium to end any earlier than June 30, 2016. (Fish & G. Code, § 5653.1, subd. (b).) The AB 120 amendments do not expand the Department's substantive legal authority available in the present case or require the Department to adopt updated regulations that fully mitigate all identified significant effects associated with suction dredging. (Id., § 5653, subd. (b).) Likewise, the amendments provide no legal authority for the Department to modify the existing, statutorily based fee structure for its related permitting program. (Id., subd. (c).) Arguments to the contrary highlight the broader need for comprehensive regulatory reform to address and resolve the complex issues associated with the future of suction dredging in California. The Department hopes that its final action in the present case, and its related lead agency effort to find out and disclose all that it reasonably can, aided considerably by the State Water Resources Control, will inform further dialogue.

The ISOR, incorporated herein by reference, sets forth the initial basis for the Department's determination, based on existing statutory, caselaw, and constitutional authorities along with the environmental review conducted pursuant to the December 2006 Court Order, that the originally proposed amendments to the previous regulations were necessary to avoid deleterious effects to fish.

In the course of the APA rulemaking process, CDFG undertook a hard look as to whether any revisions within DFG's authority would be necessary to avoid deleterious effects to fish. Some of the revisions noticed in February 2012 and detailed in the FSEIR were simply prompted by the need to address typographical and grammatical issues. Others are intended to improve the overall efficiency of and the practicalities of administering and enforcing the proposed permitting program. The Department also revised the proposed regulations in response to factual and other technical information it received during the related public review period that ran from February to May 2011. Finally, the Department determined additional revisions were necessary to effectuate its obligations under CEQA's substantive mandate to reduce related significant effects to the extent feasible and, as directed by the Fish and Game Code, to ensure that authorized suction dredging would not be deleterious to fish. (Pub. Resources Code, §§ 21002, 21002.1, subd. (b); Fish & G. Code, §§ 5653, subd. (b), 5653.9.)

In addition to water body-specific revisions, the revised regulations include changes to the more general time, place, and manner restrictions as originally proposed. Of note, the revised regulations compared to the regulations as originally proposed: (1) reduce the total number of permits that will be issued by the Department during any calendar year from 4,000 to 1,500; (2) no longer require prospective permittees to identify the locations they intend to suction dredge in their permit applications, requiring instead that permittees keep an up-to-date report card regarding their operations, requiring permittees to submit that report card to the Department in January of the following calendar year; (3) include a density restriction prohibiting the operation of any vacuum or suction dredge equipment within 500' of another operating suction dredge; and (4) reduce the permissible hours to operate vacuum or suction dredge equipment from one half hour before sunrise to sunset, to 10:00 a.m. through 4:00 p.m.

As noted above, the Department has also identified a few additional typographical and grammatical, and nonsubstantial changes to the proposed regulations since public release of the initial revisions on February 17, 2012. All of these changes are necessary to address minor errors or typographical issues. One is noteworthy to clarify an inadvertent error between the revisions as noticed under the APA and the FSEIR. Again, these changes, together with the revisions noticed to the public on

February 17, 2012, constitute the “revised regulations” for purposes of these findings. The revised regulations, in this respect, also constitute the project that is the subject of and addressed in detail in these findings for purposes of the Department’s final action under CEQA, the APA, and the Fish and Game Code.

In particular, the revised regulations, as adopted, rely on information on the distribution and status of aquatic species which was not available when the Department developed the 1994 regulations. The adopted regulations also recognize that numerous species have declined over the years, requiring a greater level of protection than provided in the 1994 regulations. The 2012 EIR and the Department’s rulemaking effort generally constitute the most thorough, up-to-date technical analysis of suction dredging and its related effects in California history. The analysis, in turn, reflects the expertise of the Department, its technical staff, as well as numerous consultants with related subject matter expertise working on the effort on behalf of the Department. The analysis also reflects the Department’s partnership with and the work product of the State Water Resources Control Board and its technical staff, and related peer review conducted by the Water Board independent of the Department. In addition, the analysis has been subject to and is a product of considerable public input from across the stakeholder spectrum, including input from many private sector and public agency technical experts. Finalizing the underlying technical analysis is not only a necessary and important component of the Department’s final action from a regulatory standpoint. The technical analysis also provides the important benefit of helping to inform ongoing debate by the people and State of California regarding whether and how to regulate suction dredge mining in the years to come.

Summary and Responses to Comments

Section 11346.9 (a)(3) of the APA requires that this FSOR summarize each objection or recommendation specifically directed at the Department's proposed action or the procedures followed by the agency in proposing or adopting the final regulation. The APA then requires an explanation of how the proposed action has been changed to accommodate each objection or recommendation, or the reasons for making no change.

To avoid redundancy and to present the objections/recommendations and the Department's responses in a format that is most meaningful, the Department is following the APA's provisions allowing the aggregation and summarizing of comments as a group. This organization is consistent with that used in the Department's FSEIR and where possible, this FSOR builds upon the summaries and responses set forth in that document. With those goals in mind, the Department's summaries and responses are organized as follows:

- Each comment directed at the Draft SEIR, and received during the comment period on that document, is included and addressed in the FSEIR's responses to comments, including but not limited to the FSEIR's master responses. The Draft SEIR and the FSEIR are incorporated herein by reference and are included in the rulemaking file.
- Each comment directed at the February 17, 2012 revised proposed regulation, noticed pursuant to Government Code section 11346.8(c) and Title 1 section 44 of the California Code of Regulations, is included in the rulemaking file and summarized using a table format. Section 13 of the rulemaking file, incorporated by reference herein to this FSOR, includes these tables: (a) summarizing those comments; (b) providing cross-references to those FSEIR's master responses addressing the comments and supporting the Department's decision to make no further change to the recommendation; and (c). identifying comments that extended beyond the topics addressed in the FSEIR. Responses to the latter category of comments are provided below.

Comment Period Should Be Extended

In response to the February 17, 2012 revised proposed regulation many commenters requested that DFG extend the 15 day comment period provided consistent with the APA and Section 44 of Title 1 of the California Code of regulations and beyond any requirements of the Department's related effort under CEQA.

The Department's adoption of the final regulation for DFG's suction dredge permitting program completed a multi-year process, including a year-long formal rulemaking period required by a court order issued in December 2006. The Department's effort under CEQA began in a formal sense in early November 2009, including extensive public notice throughout the state, along with related public meetings convened in Fresno, Sacramento, and Redding. As part of that effort, the Department also established an email subscriber list to keep interested members of the public updated about related developments.

The Department provided extensive public notice yet again in February 2011 when it released its draft CEQA analysis for public review and comment. The Department released proposed amendments to the existing regulations at the same time, commencing formal rulemaking under the APA with notice published in the California Regulatory Notice Register in March 2011. The related opportunity for public review and comment ran from February 28 to May 10, 2011, including six public hearings held throughout California. By way of context, you may be interested to know that the six public meetings held in 2011 were attended by more than 750 individuals and we received over 800 individual comment letters. The Department also received nearly 10,000 email messages.

The Department has worked diligently since May 2011 to review and consider all the information, and to prepare written responses to the thousands of comments it received during the public review period triggered in February 11, 2011 with the noticed release of the draft CEQA document and proposed regulations at that time. During the intervening ten months the Department has also issued no fewer than nine email updates to its subscriber list to keep interested parties up to date about the ongoing effort. As to the recent revisions to the proposed regulations, the Department provided advance notice that the revisions would be forthcoming specifically in an email update on February 10, 2012. The Department also highlighted the possibility in August and October 2011, targeting February 2012 specifically, in status reports filed and otherwise available to the public in Alameda and San Bernardino County Superior Courts.

Most important, on February 17, 2012, the day it released revised regulations, the Department provided extensive public notice that it was releasing revisions sufficiently related to the originally proposed amendments and completing the 15-day public notice set forth in the APA for such revisions. The Department, for example, published notice in the California Regulatory Notice Register. (Cal. Reg. Notice Register 2012, No. 7-Z, p. 174.) It also sent an email update to its subscriber list that included the revised regulations and related notice, it issued a press release, and it posted all related documents on the "Suction Dredge" portion of its web page. During this most recent 15 day review period for the regulations, which began on February 17, 2012, the Department received approximately 600 email comments, evenly split between individual responses and form letters and more than 100 letters through regular mail. Some of these letters include extensive comments running to more than 40 pages. This response indicates that the public not only had the opportunity to review the proposed regulations, but also took full advantage of that opportunity.

Finally, the proposed regulations as originally noticed in February and March 2011 comprise the lion's share by far of the Department's proposed changes to the existing regulations found in Title 14. These proposed changes have been the subject of extensive notice far exceeding any legal obligation under the APA and CEQA.

The Department's CEQA Compliance

Comments expressed concern as to whether the Department approved final regulations prior to fulfilling its obligations under CEQA. Public Resources Code section 2002 provides that it is the policy of the Legislature that public agencies such as the Department should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the process set forth in CEQA is intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures that will avoid or substantially lessen such significant effects. Finally, section 2002 states that the Legislature further declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.

The Department acknowledges the challenges of integrating CEQA and APA with their distinct procedural and substantive mandates and emphases. For example, the February 17, 2012 revised regulations arguably necessitated a 15 day notice period pursuant to the APA as a revision substantially related to the March 2011 originally proposed amendments, even where CEQA required no such additional notice or analysis.

Notwithstanding the challenges of distinguishing between CEQA's and the APA's legal mandates, as set forth in detail in the Department's CEQA Findings (attached as Appendix A), the Department fully satisfied its obligations under CEQA prior to approving the final regulations as adopted. The response above addressing comments requesting an extension of the public comment period on the revised proposed regulations released on February 17, 2012 more specifically address the Department's compliance with CEQA's requirements to inform and engage the public in the environmental review process. In that regard, the Department's substantive and procedural compliance with CEQA has not only met the act's legal requirements, but has included the most up-to-date and comprehensive scientific analysis of suction dredge's environmental impacts, along with careful analysis of the extent of the Department's legal authority and obligations to regulate the activity in the context of existing constitutional, statutory, and case law. Moreover, the Department did so not merely providing the legal minimum of public notice and response under CEQA, but using those public notice requirements as a platform to engage the diverse stakeholder groups in an ongoing conversation about the results of the scientific analysis and the extent of DFG's authority to regulate the activity.

Section 228(a): Definitions

Respondents asked whether sluices and panning are covered under these regulations or prohibited by the moratorium. These regulations apply only to suction dredging, as specified in Section 228(a)(1) of the adopted regulations. These regulations do not apply to gold mining using hand-held gold pans, sluice boxes, or highbanking or power sluicing where gravel is introduced into the highbanker or sluice box by some means other than a vacuum hose. Similarly, the current moratorium on suction dredging applies only to motorized suction dredging. Fish and Game Code Section 5653.1(d) states, "This section does not prohibit or restrict nonmotorized mining activities, including panning for gold."

Section 228(b): Permit Requirement

Several respondents expressed concern that the regulations will prevent them from assisting another miner in using their dredge. Section 228(b) requires that any person operating the intake nozzle must have a suction dredge permit or assistant suction dredge permit for persons assisting anyone with a qualifying disability. There is no permit requirement for persons assisting the suction dredge operator as long as they do not operate the intake nozzle in any manner. Each permittee who operates the nozzle of the suction dredge is required to maintain and file a report card. For enforcement purposes, permits are not transferable.

Section 228(c)(1): Permit Application and Identification

Some respondents questioned or expressed disagreement with the necessity of providing identification when purchasing a suction dredge permit, or regarding the various forms of identification that may be used. Some respondents misunderstood the requirements and assumed that all of the forms of identification listed were required. In fact, any one of the documents listed is sufficient. These are the same identification requirements necessary to purchase a fishing license, hunting license and other permits in California. The Fish and Game Code Section 5653(a) provides that the Department may require information deemed necessary for an application. That information includes a requirement to reliably identify the applicant.

Section 228(e): On-site Inspection/Section 228(f): Permits Requiring Notification Pursuant to Fish and Game Code Section 1602

Many comments expressed concerns about the requirements that certain suction dredging activities be subject to on-site inspection and/or notification pursuant to Fish and Game Code Section 1602. While considering impacts of suction dredge mining and the development of regulations consistent with statutory requirements, including public recommendations during scoping, it became apparent that some types of suction dredge mining and related activities have the potential to substantially divert or obstruct the natural flow, or substantially change or use material from the bed or channel of a river, stream, or lake. Further, there were numerous public scoping recommendations that some form of on-site evaluation or permitting be implemented.

A related concern expressed by miners was the amount of time required for the inspection to occur, the time and cost required for a Lake or Streambed Alteration Agreement (LSAA), and availability of Department staff to perform this work.

As in the DSEIR, the Department has determined that use of a suction dredge with an intake nozzle greater than 4 inches, use of a power winch, obstruction or diversion of stream flow, and dredging in a lake are all activities requiring notification pursuant to Section 1602 of the Fish and Game Code. This applies an appropriate additional statute in the Fish and Game Code to certain types of suction dredging and related activities.

The ability of the Department to provide sufficient staff resources for timely completion of on-site inspections and permitting will be addressed through a legislative proposal to modify suction dredge permit fees and by the fees required under Section 1600 et seq.

Section 228(g): Permit Cap

Many respondents questioned why a limit on the total number of permits to be issued is necessary or expressed concerns that environmental groups will purchase all or many suction dredge permits every year to eliminate or minimize suction dredge mining. There were questions regarding how this number was selected and recommendations that there be no limit on the number of suction dredge permits, or that the cap be set at the historical high number (~12,700).

In evaluating potential impacts of the Proposed Program, the Department determined that it would be necessary to consider the magnitude of the activity. Over the 15-year period prior to the moratorium enacted by SB 670, the average number of suction dredge permits sold was 3,650. The Draft Proposed Regulations circulated alongside the DSEIR identified 4,000 as the maximum annual number of permits that would be issued. The Department chose this number under the assumption that impacts from that number of permittees would be comparable to recent experience, and then developed regulations based on that assumption. If the Department had chosen a different number of permittees, such as using the historic high number of approximately 12,700, or an unlimited number of permits, the corresponding regulations would have to be more restrictive to prevent effects that are deleterious to fish.

The California Environmental Quality Act does not require lead agencies to avoid or substantially lessen all significant effects to a less-than-significant level. Instead, CEQA requires lead agencies to mitigate a proposed project's significant effects to the extent feasible. (Pub. Resources Code, §§ 21002, 21002.1, subd. (b); CEQA Guidelines, §§ 15002, subd. (a)(3), 15021, subd. (a).) This legal obligation has been described by the California Supreme Court as CEQA's "substantive mandate." In this instance DFG has determined that the incorporation of selected elements from the Reduced Intensity Alternative, considered in the DSEIR, including a reduction in the number of permits from 4,000 to 1,500 is necessary to mitigate the proposed project's significant effects to the extent feasible..

The Department considered various options to provide preference to previous permit holders. However, given the existing uncertainty regarding when the Department may resume permit sales, the number of former permit holders who may be interested and the unknown cost of those permits it is not feasible to establish a method that may not be implementable in the future.

Section 228(h): Suction Dredge Report Card

Numerous comments were received from suction dredge miners, either protesting or questioning the basis for this regulation. In some cases, commenters believed that the report card could be used by criminals to locate miners and steal either gold or equipment. However, the report card is not required to be submitted until January in the year after a permit was issued. Therefore it does not provide current information. Further, the Department, does not anticipate that the Report Card will request information on the amount of gold recovered by a miner.

The Department has established this requirement as a means to monitor the timing and intensity of suction dredge mining in waterbodies in California to inform future inspections by Department personnel for compliance and effectiveness of the regulations. This same information will be available in the future should additional amendments to the regulations be warranted. This method replaces a previously proposed concept of identifying at the application phase exactly where mining would be conducted. Miners claimed this would be unworkable and the Department was persuaded by those comments that a more efficient and effective method could be developed, which is included as §228(h).

Section 228(i): Permit Revocation or Suspension

Several commenters objected to different components of this part of the regulations. The substance of the subsection has not been modified from the previous regulations in effect since 1994. The Department's representative was changed from Regional Manager to Assistant Chief of Enforcement to conform to the Department's current organizational structure and slight modifications were made in the language to conform more precisely to Section 5653 et seq. of the Fish and Game Code.

Section 228(k)(1): Nozzle Restriction

Many respondents questioned why notification pursuant to Fish and Game Code Section 1602 would be needed for intake nozzles over 4 inches. Numerous commenters expressed concern that they were limited to use of a suction dredge with a 4" nozzle or less and that a larger size is needed to effectively excavate the amount of material needed to recover desired amounts of gold. Some comments claimed that compliance with Fish and Game Code section 1602, subdivision (a) (4) (i) is not warranted.

The amount of material vacuumed from a stream bed varies, depending on several factors. These include the size of the streambed substrate (e.g., sand, gravel, and cobble), size of the intake nozzle and vacuum hose, engine horsepower, skill of the operator and amount of time a dredge is operated. Information examined for the DSEIR indicates that the amount of material moved by a suction dredge increases gradually up to a 4-inch nozzle size. The amount of material that can be moved increases substantially with intake nozzle sizes larger than 4 inches. Suction dredge mining with nozzles greater than 4 inches was therefore determined to have the potential to substantially change the bed or channel of a stream. Section 1602 of the Fish and Game Code requires, under that circumstance, that person notify the Department. Depending on the site-specific circumstances, an LSAA may be required. Many respondents expressed opposition to this requirement specifically because they prefer dredges with intake nozzles larger than 4 inches in diameter for the very reason that larger dredges move considerably more material. Larger dredges are much more effective at removing overburden so a miner can reach gold-bearing sediments. Public comment, in effect, reinforced the necessity for notification for nozzle sizes larger than 4 inches in diameter and therefore the Department has retained this requirement.

Many respondents were opposed to this additional requirement, in part, because of the additional administrative procedures required for notification and the possibility that when an LSAA is required, additional conditions in the LSAA might further constrain their proposed operations. Some respondents were also concerned that there could be additional costs associated with this requirement. These are reasonable and accurate concerns because notification under Section 1602 does require a fee scaled to the economic value of the operation. Further costs associated with compliance with CEQA may also be required. While these costs would be new for suction dredge miners, they are routinely incurred for any other projects substantially affecting a river, stream, or lake.

Miners proposing use of a dredge nozzle larger than 4" may obtain a dredge permit and notify the Department in accordance with Fish and Game Code section 1602, subdivision (a) (4) (i). The Department will perform an on-site inspection and make a project specific determination whether a Lake and Streambed Alteration Agreement is required. If an Agreement is required, conditions may be established restricting, among other things, dredge nozzle size. In most waterbodies, dredge nozzles up to 6" in diameter may be allowed. In accordance with §228(k)(1)(E), dredge nozzles up to 8" in diameter may be allowed in some rivers.

As to whether compliance with Fish and Game Code section 1602, subdivision (a) (4) (i) is not warranted, suction dredges using larger nozzles are capable of moving substantially more material than smaller nozzles. Many suction dredge miners corroborate this in their comments. Where a person proposes to substantially change or use any material from the bed, channel, or bank of any river, stream, or lake, for example, with a suction dredge nozzle larger than 4" dbh, the Department has determined that notification is warranted.

Section 228(k)(3): Pump Intake Screening

Many miners commented that screening using 3/32-inch mesh is not technically feasible or even necessary. Reasons for these points of view include potential clogging of the screen by algae and other materials, the requirement for very large screens when using larger dredges, and an argument that the water pump intake is suspended in the water where the potential for entrainment of fish is unlikely. The Department considered these points and also the fact that the proposed regulations in Section 228.5 are intended to restrict dredging when early life stages are present. After reviewing life history and biological considerations for fish action species (as defined in Section 45 of the Fish and Game Code), the Department decided to retain this requirement even though it will require the development of improved screens for water pump intakes. Fish can be injured and killed by impellers on water pumps and similar screening is required for other activities where water is pumped from rivers and streams. The intake screens are only required on the water pump used to create the Venturi effect in the suction hose. Screens are not required on the actual suction hose intake nozzle that picks up material from the streambed.

Some comments also noted that impingement of fish in pump screens is possible. While this is true, as a practical matter several factors minimize this potential. First, the area of the screen will need to be large enough to allow for sufficient water intake, moderating the velocity of water near the screen. Second, the pump intake is typically not in a location where fish are likely to congregate. Finally, seasonal closures have been implemented to protect sensitive life stages, such as larvae or juveniles that would be most susceptible to impingement. As such, the Department believes that the requirement for screening of pump intakes would contribute to avoidance of deleterious effects from suction dredge mining on fish.

Section 228(k)(4): Pump and Fuel Containment Systems

Numerous comments were received from suction dredge miners, either protesting or questioning the basis for this regulation. Other suction dredge miners and public commenters stated that this regulation is both warranted and feasible. Most refueling takes place while suction dredges are floating in a river or stream. In the absence of a containment system, spills enter the water. In many cases, footing is slippery, further increasing the potential for fuel spills.

Section 228(l)(1): Motorized Winching

Numerous comments were received from suction dredge miners, either protesting or questioning the basis for the requirement for compliance with Fish and Game Code section 1602, subdivision (a)(4)(i) to determine if an LSAA is required.

Miners commented that the use of power winches is necessary to move boulders, some of which are several feet in diameter or larger. Winching allows access to gold-bearing deposits that would otherwise be unavailable, and allows miners to move boulders so they do not present a safety risk. The Department does not dispute that motorized winching can provide access to deposits containing gold or improve safety. Miners argued that it is impossible to know, particularly when flows are high, which boulders they may want to move and that all of these boulders move naturally during high flow events.

Changing the physical position of large boulders in a stream, river, or lake is within the scope of Section 1602 of the Fish and Game Code, because such a repositioning could substantially divert or obstruct the natural flow of a river, stream or lake; and/or substantially change or use material from the bed, channel, or bank of a river, stream, or lake.. Therefore, the Department has required that persons intending to use power winches to facilitate suction dredge mining notify the Department. Based on site-specific circumstances, the Department will then determine if an LSAA is required.

The direction provided in Fish and Game Code Section 5653 et seq. does not provide for consideration of miner safety in development of the proposed regulations. Dredgers must use their own discretion to determine if an activity is safe; the Department does not encourage dredgers to engage in unsafe activities. When a miner determines that power winching is necessary to achieve their objectives, they may do so after complying with Section 1602 of the Fish and Game Code.

Section 228(l)(3): Dredging Within 3' of the Edge of the Current Water Level

Many miners commented that this restriction, in combination with seasonal restrictions that allow mining only during the late summer months, has the effect of preventing any mining because many streams are less than 6 feet in width. In addition, miners asserted that this provision, intended primarily to prevent undercutting or mining into stream banks is unnecessary in streams underlain by bedrock. In addition to protecting streambank stability, this measure provides additional protection for young fish that often use the shallow margins of streams. The Department's assessment of impacts included this benefit in the DSEIR assessment of whether impacts were likely to be significant.

Because the Department's conclusions regarding the significance of mining impacts on fish assumed that mining would be prohibited in the lateral 3 feet of a stream often used by young fish, the Department has retained this restriction. The regulatory language has been modified to clarify that the restriction applies only to operation of the intake nozzle, rather than preventing any part of a dredge from being located with 3 feet of the lateral edge of the current water level. Further, for reasons unrelated to comments on this specific restriction, some streams were changed from Class E to Class D, thereby allowing dredging at a time when streams are likely to be wider, reducing the impact of this restriction on mining opportunity.

Section 228(l)(8): Import of Fill Material

Several respondents expressed concern that this subsection would prohibit gold panning or sluicing. Section 5650 of the Fish and Game Code states that it is unlawful to deposit in, permit to pass into, or place where it can pass into the waters of the state any substance deleterious to fish, among other resources. Mining debris, including material from a sluice box, can be deleterious to fish. With respect to gold mining, the Department interprets this statute as prohibiting the deposition of earthen material from outside the live stream into the current water level, or where it may pass into waters of the state. Material removed from the bed of the live stream and redeposited back into the live stream, by gold panning, sluicing, or suction dredging is not interpreted to be a violation of the statute. Furthermore, it should be noted that the proposed regulations relate only to suction dredging.

Section 228(l)(10): Fuel, Lubricant and Chemical Storage within 100' of the Current Water Level

Many respondents stated that it is infeasible, owing to topography, other physical constraints, land ownership or other reasons, to store fuel more than 100 feet from the current water level. The Department agrees that these circumstances exist in some locations. In those cases, fuel may be stored nearer the current water level so long as a containment system is provided. This usually will be a leak-proof pan or container within which all fuel, oil, or chemicals are stored. The regulations have been amended to provide additional detail and clarity regarding a sufficient containment system. Examples of sufficient containment include placement of fuel containers in large wash basins, above the current water level where flows will not cause spills. Other suction dredge miners and public commenters stated that this regulation is both warranted and feasible.

Section 228(l)(13): Disturbance of Mussel Beds

Numerous comments were received on various aspects of this subsection, stating that it was not feasible to avoid mussels, the regulation would be difficult to enforce, the regulation was not sufficient to protect mussels, all streams where mussels are present should be closed, and that the characterization of a mussel bed as 40 or more per square yard was too high because some mussels are in the sediment and not observable. The Department agrees that it is difficult to avoid all mussels, that it is not essential that every individual mussel be protected, and that some species of mussel can pass through a dredge without damage. Mussel beds, generally, are the most important sites for mussel reproductive success and do need a level of protection greater than was provided in previous regulations. The density threshold for mussel beds has been reduced from 40 to 10 animals per square yard, to account for mussels that are present but not readily observable. See also MR-BIO-6. In practical terms, when operation of a dredge occurs in an area where several mussels are found in close proximity to one another, this is likely a mussel bed and must be avoided. Furthermore, operational restrictions are included in the Proposed Regulations, which prohibit the willful entrainment of mollusks (Section 228(l)(17)).

Section 228(l)(14): Dredging Silt and Clay

Numerous comments were received from suction dredge miners, either protesting or questioning the basis for this regulation. Additional comments from the public, tribal and environmental interests and government agencies questioned whether this requirement is effective or enforceable.

The Department recognizes that it is impossible to avoid all silt and clay while suction dredging. Compliance with this standard is acknowledged as subjective and not quantifiable. Reasonable care is generally defined as the degree of caution and concern for the safety of himself/herself and others an ordinarily prudent and rational person would use in the circumstances. The Department does not have authority to prohibit suction dredging on the basis that it will result in some turbidity and discharge of Total Suspended Sediment (TSS). In conjunction with other elements of the regulations, this subsection is intended to reduce the discharge of TSS and turbidity. Many activities other than suction dredging, permitted by government agencies within riverds and streams result in some discharge of TSS and turbidity. This regulatory language is intended to reduce discharge while recognizing that complete avoidance is not feasible. The Department will be preparing a manual of best management practices once regulations are adopted to provide a greater level of informational detail.

Section 228(l)(15): Leveling of Tailing Piles

Many comments were received from miners opposing requirements of this subsection. It was included in the draft regulations and retained in the final regulations because of documented evidence that salmonids will use tailings for spawning even though these sites may be unstable and reduce spawning success. This measure requires only that miner's level tailing piles, not that all dredge holes be filled. Annual winter flows, in most cases, will fill and restore dredge holes to their previous condition. The safety hazards posed by dredge holes were found to be less than significant, as described in the DSEIR under Impact HAZ-5. See also MR-BIO-2.

Section 228(l)(16): Disturbance of Redds, Spawning Fish, Amphibian Egg Masses or Tadpoles/Section 228(l)(17): Willful Entrainment of Finfish, Molluscs or Amphibians

Numerous comments were received from suction dredge miners, either protesting or questioning the basis for these regulations. Additional comments from the public, tribal and environmental interests and government agencies questioned whether this requirement is effective or enforceable. The Department considered these points and also the fact that the proposed regulations in Section 228.5 are intended, in part, to restrict dredging when early life stages are present. The Section 228.5 regulations are the primary protection for early through adult life stages. These regulations are intended to clarify that additional caution is required to protect redds, spawning fish, amphibian egg masses, tadpoles, finfish, mollusks or adult amphibians. The Department will be preparing a manual of best management practices once regulations are adopted to provide a greater level of informational detail.

Section 228(l)(18): Instream Use of Wheeled or Tracked Equipment

Several commenters were concerned that this would prevent of wheeled vehicles or equipment to transport suction dredges to a river, stream or lake. The Department believes the language is clear that this restriction applies only to instream operation.

Section 228(l)(19) - (20): Requirement to Clean Suction Dredge Equipment before Relocating to another Waterbody

Numerous comments were received from suction dredge miners, either protesting or questioning the basis for this regulation. Invasive species significantly impact native species and habitats, with related adverse social and economic consequences. California has a California Aquatic Invasive Species Management Plan (CAISMP), adopted in 2008 to guide planning and management. The Department has made additional information available at <http://www.dfg.ca.gov/invasives/>. Numerous laws, described in Chapter Five of the CAISMP apply to invasive species. Programs to control the spread of aquatic invasive species, including the inspection of boats moved from one waterbody to another are already established and expanding in California. The Department has determine that §228(l)(19) - (20) are feasible measures to reduce the potential for suction dredge equipment to harbor and transport aquatic invasive species. When suction dredge equipment is to be moved from one waterbody to another all water is to be drained from the equipment for at least two weeks or the equipment can be decontaminated using methods identified at §228(l)(20). Some commenters noted that water at 120 degrees is not available in remote locations. The regulations do not require that decontamination be performed at any particular location, only that the equipment be decontaminated before placement in another waterbody.

Section 228(l)(21): Operation of a Suction Dredge within 500' of another Operating Suction Dredge

Numerous comments were received from suction dredge miners, either protesting or questioning the basis for this regulation. A few comments from the public, tribal and environmental interests and governmental agencies suggested a greater distance.

Several commenters reported that suction dredges sometimes operate in close proximity to one another, particularly where mining clubs have established claims. Where this occurs, potential exists for greater cumulative discharge of total suspended sediment and increased turbidity. In addition to the number of dredges, relevant variables include dredge nozzle and engine sizes, the duration of dredging (i.e., hours/day and number of days), timing (i.e., whether dredges are operating concurrently or not), distance between operating dredges and size of the stream (i.e., cross-sectional area, depth, and flow).

CEQA does not require lead agencies to avoid or substantially lessen all significant effects to a less-than-significant level. Instead, CEQA requires lead agencies to mitigate a proposed project's significant effects to the extent feasible. (Pub. Resources Code, §§ 21002, 21002.1, subd. (b); CEQA Guidelines, §§ 15002, subd. (a)(3), 15021, subd. (a).) This legal obligation has been described by the California Supreme Court as CEQA's "substantive mandate." In this instance DFG has determined that the incorporation of selected elements from the Reduced Intensity Alternative, considered in the DSEIR, including requiring a minimum distance of 500 feet between suction dredges while operating is necessary to mitigate the proposed project's significant effects to the extent feasible.

The Department considered the establishment of a density regulation to reduce additive effects of multiple dredges on water quality and habitat, and has added regulatory language requiring that, while operating, suction dredges must be at least 500 feet apart. This regulation does not prohibit two or more dredges from being located within 500' of each other, however, only one may be operating at any specific time.

Section 228(n): Compliance with Other Laws

Many respondents claimed that these regulations "open up" National and State Parks, Wild and Scenic Rivers, Wilderness areas, and other designated management areas to suction dredging. The Department only has authority to regulate suction dredging based on whether the effects will be deleterious to Fish. The Department does not have authority to reduce suction dredge opportunity because of land management statutes or regulations enacted for other purposes. However, where a landowner or land management entity has authority to close waters for suction dredging, and has already done so, these regulations do not supersede those restrictions. For example, where federal or state land managers have, using other authority, closed an area or specific waters to mining, the Department's regulations do not override that closure, regardless of what Class is assigned in these regulations.

Section 228(p): Hours of Operation

Some miners opposed any restriction on the period of operations. This requirement was modified but retained to give Fish a time of rest and opportunity to pass through the dredge areas to reduce impacts or potential impacts. Furthermore, a number of dredgers stated that they need good visibility to dredge effectively. Presumably, it would be difficult and unsafe to operate at night.

CEQA does not require lead agencies to avoid or substantially lessen all significant effects to a less-than-significant level. Instead, CEQA requires lead agencies to mitigate a proposed project's significant effects to the extent feasible. (Pub. Resources Code, §§ 21002, 21002.1, subd. (b); CEQA Guidelines, §§ 15002, subd. (a)(3), 15021, subd. (a).) This legal obligation has been described by the California Supreme Court as CEQA's "substantive mandate." In this instance DFG has determined that the incorporation of selected elements from the Reduced Intensity Alternative, considered in the DSEIR, including limiting the operation of the suction dredge to six hours/day, between 10:00 a.m. and 4:00 p.m is necessary to mitigate the proposed project's significant effects to the extent feasible.

Section 228.5: Use Classifications

Many commenters raised concerns about the use classifications applied to specific waters or categories of waters. In drafting the regulation, and in making the February 12, 2012 revisions, DFG has fulfilled its obligation under the applicable statutes and caselaw. The Department is the only California state agency with explicit statutory authority to regulate suction dredge mining. (Fish & G. Code, § 5653 et seq.) Although the Fish and Game Code includes a general prohibition on the use of vacuum or suction dredge equipment in any river, stream, or lake, the same provision directs the Department to issue related permits in mandatory terms if suction dredging consistent with regulations adopted by the Department will not be deleterious to fish. (Id., § 5653, subds. (a), (b); § 5653.9.) The Department's explicit substantive legal authority is limited, however, to a subset of the impacts associated with the activity. The FSEIR's General Master Response 6 (FSEIR at 4-6 to 4-15) provides a detailed description of the extent of the Department's regulatory authority, which authority DFG was compelled by Fish and Game Code sections 5653 and 5653.9 to apply in determining the scope of the use classifications in Fish & Game Code section 288.5. FSEIR Master Response 7 provides a similarly detailed analysis of the definition of "deleterious" in the context of Fish & Game section 5653.

The Department exercised these authorities to adopt regulations in the specific context of Fish and Game code section's 5653 direction to avoid deleterious impacts to fish. In so doing, the Department takes pride that its environmental review substantially advances the scientific understanding of suction dredging's impacts on a broad spectrum of environmental resources, and that these new regulations, which provide much greater protections to fish than do the existing 1994 regulations, are consistent with and support the policies and priorities underlying the laws providing waters greater protections, including the state and federal Wild and Scenic Rivers acts. Finally, DFG notes again that the revised regulations expressly state that any permittee remains subject to all other applicable law.

Impact on Local Agencies and Schools

As set forth in the Notice of Proposed Rulemaking, the originally proposed regulation would not increase costs to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630. The final regulations as adopted would similarly not increase such costs.

Reasonable Alternatives to the Proposed Regulatory Action and the Department's Reasons for Rejecting Those Alternatives

No alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.

As set forth above, the purpose of the final regulations as adopted is to implement a permitting program for suction dredging activities consistent with the requirements of Fish and Game Code Section 5653 et seq. and the December 2006 Alameda County Superior Court Order (pursuant to *Karuk Tribe of California et al. v. California Department of Fish and Game* [Super. Ct. of Alameda County, 2005, no. RG05211597]) by amending the regulations of Title 14 of the California Code of Regulations, Sections 228 and 228.5.

The following discussion sets forth the reasons why the alternatives would not be as – or more – effective than the final regulations as adopted, as well as their comparative burden on affected private persons.

No Program Alternative

CDFG analyzed a No Program Alternative, in which no amendments to the 1994 regulations on suction dredging operations would be considered or adopted, but this alternative would not be as effective as the final regulation as adopted. Adoption of the No Program Alternative would make the current “temporary” moratorium permanent. However, this alternative has been dismissed by CDFG because it would not comply with the 2006 Court Order in which CDFG was directed to conduct further environmental review of its suction dredge mining regulations and implement new regulations as necessary to protect ‘fish’ species. In addition, this alternative would violate CDFG’s mandate to issue suction dredge permits where the operation will not be ‘deleterious to fish.’ (Fish & G. Code, § 5653, subd. (b).)

1994 Regulations Alternative

Under this proposed alternative, CDFG would resume administering the Program under the 1994 Regulations, which were in place prior to the moratorium. This includes the operational requirements as outlined in those regulations as well as suction dredge use classifications for waterways unchanged from the 1994 specifications. Resuming dredging activities based on *Suction Dredge Use Classifications* from 1994 would not be as beneficial as the final regulations as adopted, because the 1994 Regulations Alternative would not take into consideration current information regarding the life history, distribution, and abundance of species and habitats in California, nor the current legal status of fish species potentially affected by suction dredging. Since 1994, additional aquatic species have declined in abundance and distribution, including some that have been listed by the State or Federal governments as threatened or endangered. CDFG has determined that based on this new information and changed circumstance, the 1994 regulations would result in deleterious effects on fish, and hence would not allow for issuance of suction dredge permits.

Therefore, this alternative was dismissed from further analysis as it does not meet the basic objectives of the 2006 Court Order, which mandates additional protection for ‘fish’ species if further environmental review concludes that the previous regulations are inadequate.

Water Quality Alternative

In addition to the seasonal and permanent closures of waterways in the proposed amendments to Fish and Game Section 228.5, this alternative would impose permanent closures on water bodies listed as impaired for sediment or mercury pursuant to Clean Water Act Section 303(d). These closures would help to avoid further degradation of these water bodies from dredging activities, and would result in a larger portion of the state which would be closed to dredging.

This alternative would have decreased the adverse effects of suction dredging activities for the majority of environmental resources. However, this alternative was not as beneficial as the final regulations as adopted, and was ultimately dismissed by CDFG, because such closures were determined to be unnecessary to avoid 'deleterious effects to fish,' and imposing regulations for effects without a nexus to the statutory directive to avoid actions 'deleterious to fish' is not within CDFG's regulatory authority.

Reduced Intensity Alternative

The Reduced Density Alternative proposed to incorporate a combination of additional restrictions on the total number of permits issued and general methods of operation to reduce the intensity of environmental effects in the state. Under this alternative, a maximum of 1,500 permits would be issued annually by CDFG, which would translate to a 53% decrease in dredging operations permitted annually compared to the historic average. Additional operational requirements under this alternative included density limitations, additional equipment restrictions, and restrictions on the total number of days each individual could dredge. The stipulations of this alternative were developed to decrease potential site disturbances and lessen overall adverse effects throughout the state. Although this alternative would avoid deleterious effects to fish, by further restricting suction dredging it would result in a greater burden on affected persons than would the final adopted regulation.

Evidence Supporting the Department's Determination Rejecting And Proposed Alternative that would Lessen Adverse Economic Impact on Small businesses.

Without amending the regulations of Title 14 California Code of Regulations Section 228 or current law (see Fish & G. Code, § 5653.1), and in combination with stipulations of the 2006 Court Order and 2009 *Hillman* injunction, the current moratorium on suction dredging activity would continue to be imposed. As described in the Socio-Economic Report (Exhibit A), this prohibition has likely resulted in adverse socioeconomic impacts on individuals and businesses associated with suction dredging in California. The adoption of amended regulations would reverse the current moratorium on suction dredging in California and would allow for commerce associated with suction dredging activities to resume more quickly throughout the state. As such, the proposed amendments are expected to have a beneficial socioeconomic impact.

That said, alternatives that would result in greater levels of suction dredging activity relative to the proposed amendments would result in further increases in socioeconomic activity. This would be true of the 1994 Regulations Alternative described above. This alternative was rejected for the reasons identified in the discussion of that alternative.

Duplication or Conflict with Federal Regulations

The CDFG's proposed regulatory action does not duplicate, conflict with or compromise existing federal law or regulations.

Appendix A: CEQA Findings

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CEQA Findings