

## STAFF SUMMARY FOR APRIL 26-27, 2017

**29. MARINE REGULATION PETITIONS AND NON- REGULATORY REQUESTS****Today's Item**Information ☐Action ☒

This is a standing agenda item for FGC to act on regulation petitions and non-regulatory requests from the public that are marine in nature. For this meeting:

- (A) Action on petitions for regulation change received at the Feb 2017 meeting.
- (B) Action on non-regulatory requests received at the Feb 2017 meeting.
- (C) Update on pending regulation petitions and non-regulatory requests referred to staff or DFW for review.

**Summary of Previous/Future Actions****(A-B)**

- FGC receipt of new petitions and requests Feb 8-9, 2017; Rohnert Park
- **Today's FGC action on petitions and requests Apr 26-27, 2017; Van Nuys**

**(C)**

- **Today's update and possible action on referrals Apr 26-27, 2017; Van Nuys**

**Background**

FGC provides direction regarding requests from the public received by mail and email and during public forum at the previous FGC meeting. Public petitions for regulatory change or requests for non-regulatory action follow a two-meeting cycle to ensure proper review and consideration.

Petitions or requests scheduled for consideration today were received at the Feb 2017 meeting in one of three ways: (1) submitted by the comment deadline and published as tables in the meeting binder, (2) submitted by the late comment deadline and delivered at the meeting, or (3) received during public forum.

Exhibits capture the regulatory and non-regulatory requests received at the last meeting that are scheduled for FGC action today. The exhibits contain staff recommendations for each request.

- (A) ***Petitions for regulation change.*** As of Oct 1, 2015, any request for FGC to adopt, amend, or repeal a regulation is required to be submitted on form FGC 1, "Petition to the California Fish and Game Commission for Regulation Change" (Section 662, Title 14). Petitions received at the previous meeting are scheduled for consideration at the next business meeting, unless the petition is rejected under 10-day staff review as prescribed in subsection 662(b).

Today, no marine petitions for regulation change were received at the previous meeting and scheduled for action today.

- (B) ***Non-regulatory requests.*** Requests for non-regulatory action received at the previous meeting are scheduled for consideration today.

## STAFF SUMMARY FOR APRIL 26-27, 2017

Today, there are four non-regulatory requests scheduled for action today (see summary table in Exhibit B1; there are no exhibits for the individual requests as they were all made verbally at the Feb 2017 meeting).

- (C) ***Pending regulation petitions and non-regulatory requests.*** This item is an opportunity for staff to provide a recommendation on items previously referred by FGC to DFW or FGC staff for review. FGC may act on any staff recommendations made today.

Today, there are updates and recommendations for two pending regulation petitions and one non-regulatory request:

1. *Petition #2015-006 (remove Rockport Rocks Special Closure).* In Feb 2016, FGC referred this petition to DFW for evaluation and recommendation. DFW has completed its review and recommends that the petition be *granted* (see petition and DFW memo in exhibits [C1](#) and [C2](#)).
2. *Petition #2016-013 to permit use of cast nets south of Point Conception.* In Jun 2016, FGC referred this petition to DFW for evaluation and recommendation. DFW has completed its review and recommends that the petition be *denied* (see petition and DFW memo in exhibits [C3](#) and [C4](#)).
3. *Update on request for FGC resolution.* In Feb 2017, FGC granted a request from Heal the Bay and Environment California for FGC to adopt a resolution in supporting the “Federal prohibition of new offshore oil and gas leasing in Federal waters offshore California”; FGC asked the petitioners to provide a draft resolution for FGC consideration. As requested, a draft resolution has been submitted by the petitioners (Exhibit [C5](#)).

### Significant Public Comments (N/A)

### Recommendation

- (B) Adopt staff recommendations for non-regulatory requests to (1) deny, (2) grant, or (3) refer to committee, DFW staff, or FGC staff for further evaluation or information gathering. See Exhibit B1 for staff recommendations for each non-regulatory request.
- (C) 1-2. Schedule action on Petition #2015-006 and Petition #2016-013 for Jun 2017 to allow time for FGC staff review of the recommendations received.
3. Direct staff to work with President Sklar to review and revise the draft resolution, based on input received at the meeting, and schedule for action in Jun 2017.

### Exhibits

- B1. [FGC table of marine requests for non-regulatory change received through Feb 9, 2017](#)
- C1. [Petition #2015-006, received Nov 24, 2015](#)
- C2. [DFW memo concerning Petition #2015-006 \(Rockport Rocks Special Closure\), received Apr 18, 2017](#)
- C3. [Petition #2016-013, received Jun 22, 2016](#)
- C4. [DFW memo concerning Petition #2016-013 \(use of cast nets\), received Apr 3, 2017](#)

## STAFF SUMMARY FOR APRIL 26-27, 2017

- C5. [Email from Environment Now and Heal the Bay with draft resolution, received Apr 14, 2017](#)

**Motion/Direction**

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission *adopts* the staff recommendations for actions on February 2017 non-regulatory requests; *approves* the staff recommendation to schedule action on Petition #2015-006 to amend regulations to remove Rockport Rocks Special Closure and Petition #2016-013 to permit use of cast nets south of Point Conception for June 2017; and *directs staff* to work with President Sklar to review and revise the draft “Resolution Supporting the Federal Prohibition of New Offshore Oil and Gas Leasing in Federal Waters Offshore California” submitted by petitioners, and schedule for action in June 2017.

**OR**

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission *adopts* the staff recommendations for actions on February 2017 non-regulatory requests; *approves* the staff recommendation to schedule action on Petition #2015-006 to amend regulations to remove Rockport Rocks Special Closure and Petition #2016-013 to permit use of cast nets south of Point Conception for June 2017; and *directs staff* to work with President Sklar to review and revise the draft “Resolution Supporting the Federal Prohibition of New Offshore Oil and Gas Leasing in Federal Waters Offshore California” submitted by petitioners, and schedule for action in June 2017, except for item(s) \_\_\_\_\_ for which the action is \_\_\_\_\_ .

**CALIFORNIA FISH AND GAME COMMISSION**  
**DECISION LIST FOR MARINE NON-REGULATORY REQUESTS THROUGH FEB 9, 2017**  
**Revised 04-11-2017**

**FGC** - California Fish and Game Commission **DFW** - California Department of Fish and Wildlife **WRC** - Wildlife Resources Committee **MRC** - Marine Resources Committee

Date Received	Name of Petitioner	Subject of Request	Short Description	Staff Recommendation	FGC Decision
2/9/2017	Josh Russo	Abalone and enforcement	(1) Requests FGC add discussion of abalone regulations to the agenda for the Mar 2017 MRC meeting; and (2) Requests FGC look into funding a special prosecutor for fish and game crimes.	<b>(1) Grant; this was discussed at March 2017 MRC meeting;</b> <b>(2) Deny; FGC does not have authority to fund positions in other government agencies.</b> <b>However, FGC is working with DFW to encourage prosecution of fish and wildlife crimes.</b>	RECEIPT: 2/8-9/2017 <b>ACTION: Scheduled 4/26-27/2017</b>
2/9/2017	Ashley Lou Gibbs, West Marin Environmental Action Committee	Aquaculture	Requests establishment of a formal work group to develop best management practices for aquaculture growers.	<b>Deny; best management practices are being developed through a public process and vetted through MRC. However, DFW will coordinate with West Marin Environmental Action Committee.</b>	RECEIPT: 2/8-9/2017 <b>ACTION: Scheduled 4/26-27/2017</b>
2/9/2017	Richard James	Aquaculture	Requests FGC address the legacy marine debris associated with oyster aquaculture leases.	<b>Refer to FGC staff.</b>	RECEIPT: 2/8-9/2017 <b>ACTION: Scheduled 4/26-27/2017</b>
2/9/2017	Paul Weakland	Abalone	Request FGC address the mismanagment of the abalone fishery.	<b>Deny; FGC adopted the Abalone Recovery and Management Plan in 2005 to ensure proper management and recovery of abalone resources, and a red abalone fishery management plan is currently under development to further inform red abalone management under changing ocean conditions.</b>	RECEIPT: 2/8-9/2017 <b>ACTION: Scheduled 4/26-27/2017</b>



2015-006  
Tracking Number: (Click here to enter text.)

To request a change to regulations under the authority of the California Fish and Game Commission (Commission), you are required to submit this completed form to: California Fish and Game Commission, 1416 Ninth Street, Suite 1320, Sacramento, CA 95814 or via email to FGC@fgc.ca.gov. Note: This form is not intended for listing petitions for threatened or endangered species (see Section 670.1 of Title 14).

Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission's authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or FGC@fgc.ca.gov.

## SECTION I: Required Information.

*Please be succinct. Responses for Section I should not exceed five pages*

1. **Person or organization requesting the change (Required)**  
Name of primary contact person: Dennis Thibeault, Vice President Forestry, Mendocino Redwood Company, LLC  
Address: P.O. Box 996/ 850 Kunzler Ranch Road, Ukiah, CA 95482  
Telephone number: 707-463-5112  
Email address: dthibeault@mendoco.com
2. **Rulemaking Authority (Required)** - Reference to the statutory or constitutional authority of the Commission to take the action requested: California Fish & Game Code § 1580; California Fish & Game Code § 2855; California Public Resources Code § 36600, 36700 , 36725[(a),(e)]
3. **Overview (Required)** - Summarize the proposed changes to regulations: Remove special closure regulations for Rockport Rocks in 14 CCR § 632 (b)(17)
4. **Rationale (Required)** - Describe the problem and the reason for the proposed change: The above-mentioned special closure was enacted on a parcel private property owned by Mendocino Redwood Company, LLC (MRC). The special closure as currently written prohibits complete access to this parcel of land from March 1 to August 31. MRC was never informed—neither verbally nor in writing—by the California Department of Fish and Wildlife or the North Coast Regional Stakeholders Group about including Rockport Rocks in a special closure when formally proposed in 2010. Evidence from historical documents establishing the North Coast Marine Protected Area (MPA) indicate that the designation of Rockport Rocks as a special closure area was an unintentional error because it was mistakenly assumed to be a part of the Coastal National Monument managed by the Bureau of Land Management. The CDFW is also on record stating that MPAs “will not affect private property rights” and that the “MPA designation process must take into account existing California State Lands Commission leases, California Fish and Game Commission state water bottom and kelp leases, tide and submerged lands grants, private tidelands, and any other legal entitlements.” Overall, had these facts been disclosed during the MLPA process, this area would have been removed from the original proposal prior to the Commission's vote on the matter.





## SECTION II: Optional Information

5. **Date of Petition: November 17, 2015**

6. **Category of Proposed Change**

- ☐ Sport Fishing
- ☐ Commercial Fishing
- ☐ Hunting
- ☒ Other, please specify: Special Closure Area for

7. **The proposal is to:** *(To determine section number(s), see current year regulation booklet or <https://govt.westlaw.com/calregs>)*

- ☐ Amend Title 14 Section(s): Click here to enter text.
- ☐ Add New Title 14 Section(s): Click here to enter text.
- ☒ Repeal Title 14 Section(s): 14 CCR § 632 (b)(17)

8. **If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition** Click here to enter text.

Or ☒ Not applicable.

9. **Effective date:** If applicable, identify the desired effective date of the regulation.

If the proposed change requires immediate implementation, explain the nature of the emergency: As soon as possible; the designation of Rockport Rocks special closure area was an unintentional error as all the facts of ownership were neither made available to the CDFW nor the Commission during the special closure designation process.

10. **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents: Supplementary information including a cover letter substantiating MRC's case is attached to this petition.

11. **Economic or Fiscal Impacts:** Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing: Designation of Rockport Rocks as a special closure is a potential encumbrance to MRC being able to sell the parcel or sell a conservation easement to an interested party.

12. **Forms:** If applicable, list any forms to be created, amended or repealed:

Click here to enter text.

## SECTION 3: FGC Staff Only

Date received: Click here to enter text.

FGC staff action:

☒ Accept - complete



- ☐ Reject - incomplete
- ☐ Reject - outside scope of FGC authority

Tracking Number

Date petitioner was notified of receipt of petition and pending action: 11/24/15

Meeting date for FGC consideration: Receive 12/9/15, Action 2/10/16

FGC action:

- ☐ Denied by FGC
- ☐ Denied - same as petition \_\_\_\_\_

Tracking Number

- ☐ Granted for consideration of regulation change



**November 23, 2015**

Mr. Jack Baylis, President  
California Fish and Game Commission  
1416 Ninth Street, Suite 1320  
Sacramento, CA 95814

Dear Mr. Baylis

We have recently been made aware a parcel of our property, referred to as "Rockport Rocks," was included in a special closure area during the Marine Life Protection Act (MLPA) designation process. Unfortunately this occurred without any type of notification to us from the California Department of Fish and Wildlife (CDFW) or the North Coast Regional Stakeholders Group (NCRSG). MRC's ownership of Rockport Rocks (aka "Sea Lion Rock") is well-established by a patent, grant deed, and numerous historical documents and photographs spanning nearly a century and are available upon request.

This special closure, 14 CCR § 632(b)(17), inhibits our private property rights and our ability to enjoy our property. We provide limited public access to Rockport Beach and the beach is visited and enjoyed by hundreds of employees, family and friends every year. The seasonal closure, which goes from March 1 to August 31, effectively prohibits access to this parcel of land by the property owner, and potentially limits recreational and educational activities (e.g., fishing, abalone diving, kayaking, kelp harvesting, bird watching, tidepooling, etc.) in nearshore waters historically enjoyed by visitors to Rockport Beach.

The public nature of the special closure has also created a potential encumbrance to MRC's ability to sell the parcel or negotiate a conservation easement with an interested party should it ever decide to do so. In 2011, the Bureau of Land Management (BLM) and the United States Fish and Wildlife Service indicated interest in acquiring Rockport Rocks for conservation purposes in the Report "Potential Murre Restoration Projects Northern California".

Our investigation into this matter leads us to conclude that the inclusion of MRC property in a special closure was done in error. First, documents for the MLPA process suggest that the CDFW and the NCRSG assumed that Rockport Rocks were part of the publically owned California Coastal National Monument system administered by the BLM. Secondly, the CDFW stated in a memorandum dated 1/31/08 from John Ugoretz to the MLPA Stakeholder Group that MPAs "will not affect private property rights" and that the "MPA designation process must take into account existing California State Lands Commission leases, California Fish and Game Commission state water bottom and kelp leases, tide and submerged lands grants, private tidelands, and any other legal entitlements". In fact, the Vizcaino Rocks special closure, located 0.6 miles to the south of Rockport Rocks, clearly embodies this philosophy as it has a modified boundary that extends 300' from only the seaward side of the rock, presumably because a buffer around the entire rock would overlap with a private beach owned by the Save-the-Redwoods League.

We conclude had CDFW, NCRSG, or the Commission known MRC was the owner of Rockport Rocks, this special closure would not have been included in the final rulemaking package that was eventually adopted. Based on the facts presented here, we kindly request that the Commission remove the special closure regulations on Rockport Rocks.





If you have any questions, would like documentation of the above statements or would like to discuss the matter further, please give me a call at (707) 463-5112 or email me at [dthibeault@mendoco.com](mailto:dthibeault@mendoco.com).

Sincerely,

Dennis Thibeault  
Vice President Forestry

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## ABOUT MRC

*Mendocino Redwood Company (MRC) was created in 1998 from lands purchased in Mendocino and Sonoma counties with the publicly declared mission to be good stewards of the forest and at the same time run a successful business. We have made significant progress in that regard:*

1. *Adopting policies to make MRCs forestlands FSC certified (since November 2000);*
2. *Adding more than 1 billion board feet of redwood and Douglas fir trees by lowering the rate of harvest;*
3. *Defining of old growth down to the level of an individual tree, along with implementation of a policy to protect all individual old growth trees across our property;*
4. *Elimination of traditional clear cutting from our property;*
5. *Long term investments to improve habitat for fish across the property by controlling or holding back more than 1 million cubic yards of sediment (more than 100,000 dump trucks of dirt) from the coastal streams flowing through our forest;*
6. *Removal of more than 36 long time fish barriers, increasing fish bearing streams by more than 20 miles.*
7. *Operating as an open and transparent business; including an open invitation to take interested individuals anywhere in the forest;*
8. *Completing a substantial rebuild of our Ukiah sawmill, assuring that Mendocino County will have infrastructure in the processing of wood products for many years to come; and*
9. *Employing about 300 skilled employees in Mendocino County earning family-level wages and benefits.*

2017 APR 19 AM 9:28

## Memorandum

Date: April 11, 2017

To: Valerie Termini  
Executive Director  
California Fish and Game Commission

From: Charlton H. Bonham  
Director



Subject: **Petition #2015-006: Remove Regulations for Rockport Rocks Special Closure**

On February 10, 2016 the California Fish and Game Commission (Commission) reviewed a petition from the Mendocino Redwood Company, LLC to remove the Rockport Rocks Special Closure located offshore of Mendocino County. During the Marine Life Protection Act Initiative Process for the designation of Marine Protected Areas (MPAs), Special Closures were used as a management tool to protect sea bird rookeries and marine mammal haul-out sites by restricting ocean-based access to these areas. Information on the use of MPAs on private lands was provided to the North Central Coast Regional Stakeholder Group by the Department of Fish and Wildlife (Department) in a memo dated January 31, 2008.

The North Coast Regional Stakeholders Group proposed the Rockport Rocks Special Closure during the MLPA Initiative process. The proposal was adopted by the Commission in June 2012 and implemented into regulations December 2012. The Rockport Rocks Special Closure seasonally protects more than 2,500 breeding and nesting seabirds, including Black Oystercatcher, Brandt's Cormorant, Common Murre, Pelagic Cormorant, Pigeon Guillemot, Rhinoceros Auklet, and Western Gull. It is also linked with the Vizcaino Rock Special Closure which as a complex protects 11,500 breeding seabirds.

The Mendocino Redwood Company supported their petition with their historical documents and the Department's memo dated January 31, 2008. They believe these documents demonstrate their private ownership of the parcel of land that is encompassed by the Rockport Rocks Special Closure. The Commission referred the petition to the Department for evaluation and recommendation.

The Department's Marine Region and Office of General Counsel began review of the petition and associated documents late February 2016. After reviewing the historical documents submitted by the Mendocino Redwood Company, Department documents, and existing laws and regulations associated with the Special Closure, it was clear that consultation with the California State Lands Commission (SLC) was needed to determine whether the submerged lands around the Special Closure were sovereign lands of the State of California. Department staff contacted SLC in May 2016 and again in September 2016, provided the historical documents, and requested their input. SLC responded with the following information in October 2016:



- *The Rockport Rocks are located within lands the State did not acquire or patent and are federal lands patented by the U.S. as SCRIP Patent, Serial No, 999436, Dated 4/1/1927 (Lots 5,6, & 7, Sec. 23 and Lot 5, Sec. 26, T22N, R18W, MDM). The Pacific Ocean surrounding these rocks (islands) is within ungranted sovereign land.*

Given the information received from SLC, and the potential overlap with the federal Coastal National Monuments, the Department contacted the Bureau of Land Management's (BLM), California office in November 2016 to determine whether the rocks or adjacent submerged lands were under federal jurisdiction. BLM reviewed the historical documents submitted by the Mendocino Redwood Company and provided the following information in December 2016:

- *Our State Office has confirmed that the BLM patented the islands in 1927.*

The patent on the islands in 1927 deeded ownership of the islands to the Mendocino Redwood Company. As a result of the Department's analysis, in conjunction with the state and federal agencies with potential jurisdiction over sovereign lands, the Department concludes that the Mendocino Redwood Company is in private ownership of Rockport Rocks. Given this finding, the Department recommends the Rockport Rocks Special Closure be removed from regulation.

If you have any questions or need additional information, please contact Dr. Craig Shuman, Regional Manager of the Marine Region, at (805) 568-1246.

#### Attachment

ec: Craig Shuman, D. Env., Region Manager  
Marine Region  
[Craig.Shuman@wildlife.ca.gov](mailto:Craig.Shuman@wildlife.ca.gov)

Mike Stefanak, Assistant Chief  
Law Enforcement Division  
[Mike.Stefanak@wildlife.ca.gov](mailto:Mike.Stefanak@wildlife.ca.gov)

Becky Ota, Program Manager  
Marine Region  
[Becky.Ota@wildlife.ca.gov](mailto:Becky.Ota@wildlife.ca.gov)

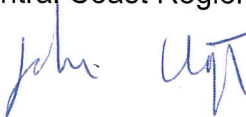
2017 APR 19 AM 9:28

State of California

# Memorandum

Date: January 31, 2008

To: Marine Life Protection Act North Central Coast Regional Stakeholder Group

From: **John Ugoretz**  
Department of Fish and Game 

Subject: **Private Land Ownership and Marine Protected Areas**

As the North Central Coast Marine Life Protection Act process develops, three questions have been posed concerning private land ownership and marine protected areas (MPAs). The Department of Fish and Game (Department) is providing these general responses to help respond to the issues.

1. **Will MPAs change existing property ownership?** No. The MLPA is an ecosystem-based conservation and management act for public trust resources that does nothing to affect private property rights. MPAs only exist seaward of the mean high tide line<sup>1</sup>, so the potential for overlap with other property interests is very limited. If such overlap occurs, the MPA designation process must take into account existing California State Lands Commission leases, California Fish and Game Commission state water bottom and kelp leases, tide and submerged lands grants, private tidelands, and any other legal entitlements. The state marine reserve prohibition on "other activities that upset the natural ecological functions of the area" is limited to activities within the authority of the Fish and Game Commission<sup>2</sup>.
2. **How would MPAs affect access from private properties?** The MLPA does not change any existing authority governing how an MPA may be accessed through adjacent private property<sup>3</sup>. In any case, no Department employee, agent, or licensee has a special right or privilege to knowingly enter private land without either the consent of the owner or a warrant<sup>4</sup>. This provision does not apply in cases of an emergency or for law enforcement. However, ownership of adjacent property does not confer any special right or privilege of access to an MPA or resources within an MPA. Conversely, the MLPA in no way diminishes the right of adjacent property owners to exclude the public from accessing an MPA through their land.

<sup>1</sup> Fish and Game Code §2852(c).

<sup>2</sup> Fish and Game Code §2852(d).

<sup>3</sup> As a practical matter, management and enforcement activities would ordinarily be undertaken by boat.

<sup>4</sup> Fish and Game Code §857.



With regard to access from sea, the general regulation for State MPAs is that transit across or through an MPA is allowed<sup>5</sup>. While access may be restricted in special cases, this would only occur where a specific resource concern warrants such restriction and where the restriction has been reviewed in public process.

3. **How will marine stewardship be addressed along private properties if MPAs are established there?** Resource stewardship under the MLPA is no different than in any other fish and game context, particularly when Department-managed areas lie adjacent to private lands. It is well-settled that fish and wildlife are public trust resources, and the Department retains jurisdiction over these resources even when they are on private property<sup>6</sup>. The conditions under which the Department may enter onto private lands in the exercise of that jurisdiction are statutorily defined. The MLPA additionally encourages public participation in the management of MPAs, and this includes cooperation with adjacent landowners through the regional planning process<sup>7</sup>.

cc: Secretary Mike Chrisman, California Resources Agency  
President Richard Rogers, California Fish and Game Commission  
Executive Director John Carlson, California Fish and Game Commission  
MLPA Blue Ribbon Task Force  
MLPA Initiative staff  
MLPA Master Plan Science Advisory Team  
MLPA Statewide Interests Group

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<sup>5</sup> Title 14, California Code of Regulations, §632(a)(8)

<sup>6</sup> Fish and Game Code §§ 711.7(a), 1802.

<sup>7</sup> Fish and Game Code §§ 2853(c)(4); 2855(c)(4).



2016-013

Tracking Number: (Click here to enter text.)

To request a change to regulations under the authority of the California Fish and Game Commission (Commission), you are required to submit this completed form to: California Fish and Game Commission, 1416 Ninth Street, Suite 1320, Sacramento, CA 95814 or via email to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Note: This form is not intended for listing petitions for threatened or endangered species (see Section 670.1 of Title 14).

Incomplete forms will not be accepted. A petition is incomplete if it is not submitted on this form or fails to contain necessary information in each of the required categories listed on this form (Section I). A petition will be rejected if it does not pertain to issues under the Commission's authority. A petition may be denied if any petition requesting a functionally equivalent regulation change was considered within the previous 12 months and no information or data is being submitted beyond what was previously submitted. If you need help with this form, please contact Commission staff at (916) 653-4899 or [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov).

## **SECTION I: Required Information.**

*Please be succinct. Responses for Section I should not exceed five pages*

1. **Person or organization requesting the change (Required)**  
Name of primary contact person: April Wakeman, The Sportfishing Conservancy  
Address: 200 Nieto Avenue, Suite 207, Long Beach, CA 90803  
Telephone number: (714) 686-6548  
Email address:
2. **Rulemaking Authority (Required)** - Reference to the statutory or constitutional authority of the Commission to take the action requested: Regulation requested to be amended: Title 14 Section 28.80 Authority: Pursuant to Fish and Game Code section 200, power is "delegated to the commission...to regulate the taking or possession of birds, mammals, fish, amphibian, and reptiles..."
3. **Overview (Required)** - Summarize the proposed changes to regulations: Regulations provide that cast nets may only be used north of Point Conception and specify certain species that may be taken by cast net by recreational anglers. We request that: cast nets be allowed in all state marine waters.
4. **Rationale (Required)** - Describe the problem and the reason for the proposed change: There appears to be no rationale for the distinction between using cast nets north or south of Point Conception. While we anticipate use of cast nets to be mostly limited to private boaters, cast nets are appropriate for only certain species. We request that regulatory authority be expanded to cover all of these species. At this time commercial bait boats generally use massive seine nets to harvest these same species. The cast net impact would be limited as currently recreational fishermen would acquire [though not as easily] the same bait by fishing sabiki rigs, squid jigs, brailles, dip nets, or by purchase from the bait haulers.



## SECTION II: Optional Information

5. **Date of Petition:** June 23, 2016
6. **Category of Proposed Change**  
☒ Sport Fishing  
☐ Commercial Fishing  
☐ Hunting  
☐ Other, please specify: Click here to enter text.
7. **The proposal is to:** *(To determine section number(s), see current year regulation booklet or <https://govt.westlaw.com/calregs>)*  
☒ Amend Title 14 Section(s): 28.80 Dip nets of any size and baited hoop nets not greater than 36 inches in diameter may be used to take herring, Pacific staghorn sculpin, shiner surfperch, surf smelt, topsmelt, anchovies, shrimp and squid. ~~Hawaiian type throw nets may be used north of Point Conception to take such species.~~  
☐ Add New Title 14 Section(s): Click here to enter text.  
☐ Repeal Title 14 Section(s): Click here to enter text.
8. **If the proposal is related to a previously submitted petition that was rejected, specify the tracking number of the previously submitted petition** Click here to enter text.  
Or ☒ Not applicable.
9. **Effective date:** If applicable, identify the desired effective date of the regulation.  
If the proposed change requires immediate implementation, explain the nature of the emergency: Click here to enter text.
10. **Supporting documentation:** Identify and attach to the petition any information supporting the proposal including data, reports and other documents: Click here to enter text.
11. **Economic or Fiscal Impacts:** Identify any known impacts of the proposed regulation change on revenues to the California Department of Fish and Wildlife, individuals, businesses, jobs, other state agencies, local agencies, schools, or housing: There should be no or minor cost to DFW and would reduce costs of anglers south of Point Conception. Should the department incur costs in implementing this regulation a license stamp similar to the 2<sup>nd</sup> Rod Stamp could be used to cover those costs.
12. **Forms:** If applicable, list any forms to be created, amended or repealed:  
Click here to enter text.

## SECTION 3: FGC Staff Only

Date received: Click here to enter text.

FGC staff action:

RECEIVED AT

JUN 22 2016

COMMISSION MEETING  
AGENDA ITEM 2



State of California -- Fish and Game Commission

**PETITION TO THE CALIFORNIA FISH AND GAME COMMISSION FOR REGULATION CHANGE**  
FGC 1 (NEW 10/23/14) Page 3 of 3

- ☒ Accept - complete  
☐ Reject - incomplete  
☐ Reject - outside scope of FGC authority

Tracking Number

Date petitioner was notified of receipt of petition and pending action: July 6, 2016

Meeting date for FGC consideration: August 24-25, 2016

FGC action:

- ☐ Denied by FGC  
☐ Denied - same as petition \_\_\_\_\_  
Tracking Number  
☐ Granted for consideration of regulation change



## Memorandum

Date: April 3, 2017

To: Valerie Termini,  
Executive Director  
Fish and Game Commission

From: Craig Shuman, D. Env.  
Marine Regional Manager



Subject: Regulatory Petition to change Section 28.80., Title 14 CCR, Dip Nets and Hawaiian type Throw Nets

### Summary

The Department of Fish and Wildlife (Department) has reviewed the above-referenced petition and recommends denial of the petition at this time. As explained below, there are several unanswered questions that would need to be addressed prior to expansion of the requested gear to all state waters. In addition, the Department, with support of the Fish and Game Commission (Commission), has committed to delaying all non-essential marine fisheries regulatory packages until after the Marine Life Management Act (MLMA) Master Plan Amendment process has been completed.

### Background

In June 2016, a petition was filed with the Commission requesting a change be made to the existing sport fishing regulation Section 28.80, Title 14 California Code of Regulations (CCR), with the intent to allow the use of throw nets in all state marine waters. The regulation currently restricts the use of throw nets south of Point Conception, as well as restricting the species that may be taken north of Point Conception:

- **Title 14 CCR, § 28.80. Dip Nets and Hawaiian Type Throw Nets:**  
Dip nets of any size and baited hoop nets not greater than 36 inches in diameter may be used to take herring, Pacific staghorn sculpin, shiner surfperch, surf smelt, topsmelt, anchovies, shrimp and squid. Hawaiian type throw nets may be used north of Point Conception to take such species.

The petition proposes to strike the language in the last sentence of the current regulation, "Hawaiian type throw nets may be used north of Point Conception to take such species", to allow the use of throw nets in all state marine waters.

### Department Evaluation

The original basis for prohibiting throw (cast) nets in marine waters south of Point Conception was to protect Grunion, which is much more common in the area (1993 Ocean Sport Fishing Regulations CEQA, pgs. 2-10,-11). Despite brief local concentrations during spawning runs, Grunion are not an abundant species.

Although no formal stock analyses have been undertaken, the population north of Los Angeles County is considered to be extremely limited. The majority of the population occurs along the coast of Los Angeles (including Santa Catalina Island), Orange, and San Diego counties. It is estimated that California contains 95 percent or more of the entire global habitat range for this species. Recent studies monitoring Grunion and long term trends in run strength indicate that Grunion have declined overall since 2011, with individual beaches showing the same pattern (Dr. Karen Martin, Pepperdine University, Comments for State Wildlife Action Plan 2015 Update, personal comm. 2015.).

Information is lacking on whether this gear type would improve fishing efficiency as implied by the petition, or create new fishing pressure on species that could be negatively impacted by increased incidental fishing mortality. The indiscriminate nature of throw nets to take any species that become entangled raises concerns of poaching and/or overfishing of vulnerable or managed species, intentional or not. In addition, improperly discarded or lost throw nets can create entanglement issues for seabirds, marine mammals, and non-target species. For example, after major spawning events for herring, cast nets are frequently observed by Department staff to be hung up and discarded on rocks, pier pilings, and other structures.

A number of potential uncertainties would need to be addressed to properly evaluate this petition. Research is needed on the susceptibility of potential target species, and the degree of potential bycatch, including from lost fishing gear. Acquiring this information represents a new workload at a time when the current priority for the Department's Marine Region is to amend the MLMA Master Plan. Consequently, the Department does not have the staff resources to conduct new investigations to address the uncertainties associated with this petition. After the amended Master Plan is adopted, the Department would be supportive of exploring opportunities to collaborate with the petitioners on ways to obtain the needed information should this effort be deemed to be a high priority.

Thank you for the opportunity to provide the Department's perspective on this petition. If you have any questions or need additional information, please contact Tom Barnes in the Department's Marine Region by telephone at 858-467-4233, or via e-mail at [Tom.Barnes@wildlife.ca.gov](mailto:Tom.Barnes@wildlife.ca.gov)

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**From:** [Sarah Sikich](#)  
**To:** [FGC](#)  
**Cc:** [Miller-Henson, Melissa@FGC](#); [Rita Kampalath](#); [Dan Jacobson](#); [Dana Murray](#)  
**Subject:** proposed resolution supporting federal prohibition on new oil and gas development  
**Date:** Friday, April 14, 2017 2:29:20 PM  
**Attachments:** [image003.png](#)  
[Draft FGC Resolution on oil gas \(00358090xA1C15\).docx](#)

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On behalf of Environment California and Heal the Bay,

We are submitting the attached resolution for the California Fish and Game Commission to consider adopting at its April 2017 meeting. The resolution expresses the Commission's support for federal prohibition on new oil and gas leases offshore of California, which would threaten the long-term sustainability of our state's fish and wildlife.

At the Commission's December 2016, our organizations requested such a resolution. The Commission then directed its staff, at its February 2017 meeting, to request that we draft resolution text. Accordingly, please accept the attachment.

We also respectfully request that the item be scheduled for April 27<sup>th</sup>, as we plan to have staff attend the meeting that day, who can speak to the item and answer any questions the Commission may have.

We thank you in advance for your for consideration.

Regards,  
Sarah

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**SARAH ABRAMSON SIKICH | VICE PRESIDENT**

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## **CALIFORNIA FISH AND GAME COMMISSION**

### **RESOLUTION SUPPORTING THE FEDERAL PROHIBITION OF NEW OIL AND GAS LEASING IN FEDERAL WATERS OFFSHORE OF CALIFORNIA**

**WHEREAS**, the mission of the California Fish and Game Commission is, on behalf of California citizens, to ensure the long-term sustainability of California's fish and wildlife resources; and

**WHEREAS**, the California coast and its waters are home to an abundance of diverse fish and wildlife, including numerous rare, threatened and endangered species, as well as sensitive habitats on which they depend; and

**WHEREAS**, the California Fish and Game Commission adopted California's first-in-the-nation network of marine protected areas, which was created to help ensure that the natural resources, marine ecosystem functions, and marine heritage of the state were protected; and

**WHEREAS**, hundreds of millions of California residents and visitors enjoy the state's ocean and coast for recreation, exploration and relaxation; and

**WHEREAS**, there has been no new offshore oil and gas lease in California since the 1969 blowout of a well in federal waters, offshore Santa Barbara County, that spilled 3.4 million to 4.2 million gallons (80,000 to 100,000 barrels) of crude oil into the Santa Barbara Channel and onto the beaches of Santa Barbara County, fouling the coastline from Goleta to Ventura and representing the largest oil spill in waters off the California shore; and

**WHEREAS**, as recently as May 2015, California experienced another oil spill during which an oil pipeline owned by Plains All American Pipeline ruptured near Refugio State Beach in Santa Barbara County releasing approximately 100,000 gallons (2400 barrels) of crude oil, with about 21,000 gallons (500 barrels) spilling into the Pacific Ocean and creating a nine mile oil slick; and

**WHEREAS**, beginning in 1921, and many times since, the California Legislature has enacted laws that withdrew certain offshore areas from oil and gas leasing, and by 1989, the state's offshore oil and gas leasing moratorium was in place; and

**WHEREAS**, in 1994, the California Legislature made findings in Assembly Bill 2444, Chapter 970, Statutes of 1994, that offshore oil and gas production in certain areas of state waters poses an unacceptably high risk of damage and disruption to the marine environment; and

**WHEREAS**, in the same bill, the Legislature created the California Coastal Sanctuary Act, which included all of the state's unleased waters subject to tidal influence and prohibited new oil and gas leases in the sanctuary, unless the President of the United States has found a severe energy supply interruption and has ordered distribution of the Strategic Petroleum Reserve, the Governor finds that the energy resources of the sanctuary will contribute significantly to alleviating that interruption, and the Legislature subsequently amends Chapter 970 to allow that extraction; and

**WHEREAS**, section 18 of the Outer Continental Shelf Lands Act (43 U.S. Code [U.S.C.] 1331 et seq.) requires the preparation of a nationwide offshore oil and gas leasing program setting a five-year schedule of lease sales implemented by the Bureau of Ocean Energy Management within the U.S. Department of the Interior; and



**WHEREAS**, consistent with the principles of section 18 and the resulting regionally tailored leasing strategy, the current exclusion of the Pacific Outer Continental Shelf from new oil and gas development is consistent with the long-standing interests of Pacific coast states, as framed in the 2006 Agreement on Ocean Health adopted by the governors of California, Washington, and Oregon; and

**WHEREAS**, the Bureau of Ocean Energy Management recently released a final 2017-2022 leasing program that continues the moratorium on oil and gas leasing in the undeveloped areas of the Pacific Outer Continental Shelf; and

**WHEREAS**, Governor Brown, along with previous California governors, have united with the governors of Oregon and Washington in an effort to commit to developing robust renewable energy sources to reduce our dependence on fossil fuel and help us reach our carbon emission goals; and

**WHEREAS**, burning fossil fuels exacerbates global climate change, which increasingly impacts the sustainability of marine ecosystems, including fish and wildlife, in California and beyond; and

**WHEREAS**, there are renewed calls for opening offshore areas for drilling and for lifting moratoriums on energy production in federal areas, which could lead to more oil spills and increased dependence of fossil fuels; and

**WHEREAS**, the California Fish and Game Commission considers new oil and gas development offshore of California to be a threat to environmental health, including our marine ecosystems, fisheries and wildlife; and

**WHEREAS**, the California Fish and Game Commission also considers new oil and gas development offshore of California to be a threat to the nation's economy, given that our state sustains more than \$18 billion of recreation and tourism dependent on the ocean and coast;

**NOW THEREFORE, BE IT RESOLVED** that the California Fish and Game Commission strongly and unequivocally supports the current federal prohibition on new drilling in federal waters offshore California, opposes attempts to modify the prohibition, and will consider any appropriate actions to maintain the prohibition; and

**BE IT FURTHER RESOLVED**, that the California Fish and Game Commission will transmit copies of this resolution to the President and Vice President of the United States, to the Governor of California, to the Majority and Minority Leaders of the United States Senate, to the Speaker and Minority Leader of the United States House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Secretary of the United States Department of the Interior, to the Director of the Bureau of Ocean Energy Management, and to each member of the California State Senate and Assembly.

**APRIL 27, 2017**