35. MARINE PETITION FOR REGULATION CHANGE

Today's Item **Information ☐** **Action ☒**

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

(A) Action on petitions for regulation change received at the Apr 2017 meeting.

(B) Update on pending regulation petitions referred to staff or DFW for review.

Summary of Previous/Future Actions

(A)

- Receipt of new petitions — Apr 26-27, 2017; Van Nuys
- **Today's action on petitions** — **Jun 21-22, 2017; Smith River**

(B)

- **Today's update and possible action on referrals** — **Jun 21-22, 2017; Smith River**

Background

As of Oct 1, 2015, any request for FGC to adopt, amend, or repeal a regulation must 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).

Petitions scheduled for consideration today under (A) were received at the Apr 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. Petitions considered under (B) were scheduled for action at a previous meeting and were referred by FGC to DFW or FGC staff for further review prior to action.

(A) ***Petitions for regulation change.***

No marine regulation petitions were received in Apr 2017 or scheduled for FGC action at this meeting.

(B) ***Pending regulation petitions and non-regulatory requests.*** This item is an opportunity for staff to provide a recommendation on petitions previously referred by FGC to DFW or FGC staff for review. Exhibit B1 provides a summary table of pending regulation petitions with staff recommendations for each request described below; FGC may act on any staff recommendations made today.

Three updates on pending petitions referred to FGC staff or DFW are scheduled for action at this meeting.

I. *Petition from Aug 6, 2014 (reinstate incidental take allowance for ridgeback prawn in State trawl fisheries)*: Staff from DFW and FGC conferred to review

the regulatory history and recommend that the petition be *granted* (no exhibit for original petition).

II. *Petition #2015-006 (remove Rockport Rocks Special Closure)*: In Apr 2017, DFW provided a review and recommendation for this petition. Based on review, DFW recommends that the petition be *granted* (see petition and DFW memo in exhibits B2 and B3).

III. *Petition #2016-013 (permit use of cast nets south of Point Conception)*: In Apr 2017, DFW provided a review and recommendation for this petition. Based on review, DFW recommends that the petition be *denied* (see petition and DFW memo in exhibits B4 and B5).

Significant Public Comments (N/A)

Recommendation

(A) N/A

(B) Adopt staff recommendations for referred regulation petitions to (1) deny or (2) grant. See Exhibit B1 for FGC and DFW staff recommendations for each regulation petition.

Exhibits

B1. FGC table of pending referred marine petitions for regulatory change, for action in Jun 2017

B2. Petition #2015-006: Rockport Rocks Special Closure

B3. DFW memo regarding Petition #2015-006, received Apr 19, 2017

B4. Petition #2016-013: Use of cast nets south of Point Conception

B5. DFW memo regarding Petition #2016-013, dated Apr 3, 2017

Motion/Direction

(B) Moved by _____ and seconded by _____ that the Commission adopts the staff recommendations for actions on pending petitions for regulation change.

OR

Moved by _____ and seconded by _____ that the Commission adopts the staff recommendations for actions on pending petitions for regulation change, except for item(s) _____ for which the action is _____.

CALIFORNIA FISH AND GAME COMMISSION
DECISION LIST FOR PENDING MARINE PETITIONS FOR REGULATION CHANGE REFERRED FOR REVIEW, FOR FGC ACTION
Revised 06-09-2017

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

Grant: FGC is *willing to consider* the petition through a process **Deny:** FGC is *not willing to consider* the petition **Refer:** FGC *needs more information* before deciding whether to grant or deny the petition

Tracking No.	Date Received	Name of Petitioner	Subject of Request	Code or Title 14 Section Number	Short Description	Staff Recommendation	FGC Decision
N/A	7/14/2014 8/6/2014 - meeting	Mike McCorkle, Southern California Trawlers Association	Ridgeback Prawn incidental take allowance	T14, Sec. 120.12	Request to reinstate incidental take allowance (50 lb) for ridgeback prawn in state trawl fisheries, which was removed in 2008 in error during regulation clean-up to remove all spot prawn trawling provisions following spot prawn trawl gear ban.	**Staff Update (for 6/21-22, 2017 FGC meeting):** GRANT; staff reviewed regulatory history and concurs that the incidental take allowance was removed without cause. In addition, DFW evaluated any potential risk to the ridgeback prawn stock from reinstating the provision by analyzing catch history; DFW and FGC staff concur that the analysis does not indicate resource concerns associated with the incidental take provision.	Referred to FGC marine advisor on 10/8/2014 for evaluation and recommendation. **ACTION:** Scheduled 6/21-22/2017
2015-006	11/24/2015	Dennis Thibeault	Rockport Rocks	632(b)(17), T14	Remove special closure regulations for Rockport Rocks due to private ownership of rocks.	**DFW Update (on 4/27/17):** GRANT; findings confirm that rocks comprising Rockport Rocks are privately owned and that removing the special closure regulations is warranted **Staff Update (for 6/21-22, 2017 FGC meeting):** GRANT; for consideration in rulemaking, and encourage petitioner to conduct education and outreach and explore best management practices to protect nesting and roosting seabirds from disturbance, consistent with the special closure intent.	Referred on 2/11/2016 to DFW for evaluation and recommendation. **ACTION:** Scheduled 6/21-22/2017
2016-013	6/22/2016	April Wakeman, The Sportfishing Conservancy	Use of cast nets	28.80, T14	Permit use of cast nets south of Point Conception for consistency in all state marine waters.	**DFW Update (on 4/27/17):** DENY; concerns over grunion and gear - more information gathering is needed before expanding opportunity to a new geographic region **Staff Update (for 6/21-22, 2017 FGC meeting):** DENY; request that petitioner work with DFW to identify information needs and/or constraints.	REFER on 8/24/2016 to DFW for evaluation. **ACTION:** Scheduled 6/21-22/2017

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 1 of 3

Tracking Number: 2015-006 ~~(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

Allweather Wood™ Humboldt Redwood™ Mendocino

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.

Sincerely,

Dennis Thibeault
Vice President Forestry

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.*

State of California
Department of Fish and Wildlife

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

Mike Stefanak, Assistant Chief
Law Enforcement Division
Mike.Stefanak@wildlife.ca.gov

Becky Ota, Program Manager
Marine Region
Becky.Ota@wildlife.ca.gov

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[1], 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[2].

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[3]. 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[4]. 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.

[1] Fish and Game Code §2852(c).
[2] Fish and Game Code §2852(d).
[3] As a practical matter, management and enforcement activities would ordinarily be undertaken by boat.
[4] 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[5]. 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[6]. 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[7].

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

[5] Title 14, California Code of Regulations, §632(a)(8)
[6] Fish and Game Code §§ 711.7(a), 1802.
[7] Fish and Game Code §§ 2853(c)(4); 2855(c)(4).

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 1 of 3

2016-013

Tracking Number: (Click here to enter text.)

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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: April Wakeman, The Sportfishing Conservancy
   Address: 200 Nieto Avenue, Suite 207, Long Beach, CA 90803
   Telephone number: (714) 686-6548
   Email address: aprilwakeman@gmail.com

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 2nd 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

☒ 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

State of California
Department of Fish and Wildlife

M e m o r a n d u m

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

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